

**Michigan Court Improvement Program
Assessment of Probate Courts' Handling of
Child Abuse and Neglect Cases**

FINAL REPORT

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Submitted to
MICHIGAN SUPREME COURT
STATE COURT ADMINISTRATIVE OFFICE

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I am fifteen and have been in foster care for three years. I also have a younger brother age four and a younger sister age five who are also in foster care.

As an older child I can pretty much fend for myself, but I feel that the system should be changed to get younger children out of the system and into stable, loving families. There have to be good families out there who would love to have young children to raise as their own.

I love my parents and know that they are on drugs and can't seem to help themselves, much less us, but why should my brother, sister, and I have to be punished for their actions? How much of a chance should they be given before we are given a chance?

I know that I don't have the answers, but there has to be a better way. I'm only a kid, but maybe by the time I'm grown there will be a better way and other children won't have to go through what my brother, sister, and I have gone through. Maybe all children with parents who don't love them or who can't care for them will have the chance to live as part of a real family with all the love and security of knowing that they are loved, and that no one will come and move them any minute.

Maybe these children will have the opportunity to have real parents to call their own, where they can love and be loved in return. I'm one of the lucky ones.

Excerpts from "The Lovable Child" by
Miranda "Nikki" Kent, 15, Harvest, Alabama¹

¹Kent, Miranda, "The Lovable Child," *The Heart Knows Something Different: Teenage Voices From the Foster Care System*, ed. Al Desetta (New York: Youth Communication/Persea Books 1996), 115-117.

I. INTRODUCTION

It has been sixteen years since the federal Adoption Assistance and Child Welfare Act (AACWA) of 1980² was enacted by the United States Congress to combat the harm children experience when left "adrift" in the child welfare system. The Act was to have been instrumental in reforming the judiciary's handling of child abuse and neglect cases throughout the nation to ensure that children were not unnecessarily separated from their families when appropriate services could keep them together, and that if removed, they would be afforded the opportunity to have permanency, stability and adult nurturance in their lives. It was also the impetus for the passage of numerous state statutes incorporating the requirements of the federal act, including provisions related to family reunification, administrative reviews, permanency planning, and independent living services.

The enactment of the federal AACWA has made a significant difference in the lives of thousands of children since its passage. Many children have been protected from the trauma associated with the unnecessary severance of parental, sibling and other familial ties, and have benefitted from juvenile courts being more attentive to permanency planning considerations. However, there are still too many children who languish in our foster care systems and who share the anguish of fifteen year old Miranda "Nikki" Kent.

The underlying mission of the Michigan court improvement project is to realize the hopes of abused and neglected children, like "Nikki," who are currently in or at risk of long-term foster care or institutional placements. A whole-hearted commitment to implementing appropriate reforms in the handling of child abuse and neglect cases in Michigan and maintaining those aspects of the current system that are working for children and families will mean that in the future, no Michigan child will be left without the support and love of family. In November 1995, the American Bar Association (ABA) Center on Children and the Law and the National Center For State Courts (NCSC) were awarded a grant by the State Court Administrative Office (SCAO) of the Michigan Supreme Court to conduct a statewide assessment of Michigan probate courts' handling of child abuse and neglect cases. Funded by the Omnibus Budget Reconciliation Act of 1993 (OBRA), the project is one of many juvenile court improvement projects currently being conducted nationwide

²P.L. 96-272, 42 U.S.C. §§ 620-627, 670-679.

to assist states in developing and implementing plans to ensure that courts are moving children's cases toward permanency. The assessment consists of three phases:

- a statewide survey of judges and referees presiding over abuse and neglect proceedings;
- visits to three sites to interview judges, court administrators, attorneys, FCRB members, CASA program representatives, FIA staff and others who work with children and families involved in the child welfare system; and
- individual case tracking consisting of reviews of a representative number of court child abuse and neglect files.

As Michigan moves to reorganize its statewide court system and establish a unified family court, it is imperative that the attributes of the current probate court system be retained.³ Overall, this assessment revealed that in contrast to many other jurisdictions around the country, Michigan's probate courts are in or near compliance with many of the standards of the National Council of Juvenile and Family Court Judges governing the handling of child abuse and neglect cases.⁴

For the most part, the probate courts have implemented systems of case calendaring and assignment, case flow management techniques, and early attorney appointment that are enhancing the courts' ability to make timely permanency planning decisions in children's cases. Even more importantly, the majority of Michigan's probate courts are comprised of specialist judges and referees

³In 1996, Michigan legislation was enacted that mandates the statewide creation of a unified family court system. MCL 600.1001 et. seq. This legislation directly impacts on probate courts' handling of abuse and neglect cases as probate court jurisdiction will eventually come under the auspices of the circuit court's family division. This means that judges and referees typically assigned to handle probate court matters, including abuse and neglect cases, may also be required to preside over other domestic relations matters, such as child custody, child support, visitation, and domestic violence. The legislative directive provides:

Not later than July 1, 1997, the chief circuit judge and the chief probate judge shall enter into an agreement that establishes a plan for how the family division will be operated in that circuit and how the services of the agencies listed in section 1043 will be coordinated in order to promote more efficient and effective services to families and individuals. In Wayne county such agreement shall be made by the chief circuit judge, chief probate judge, and the chief judge for Detroit's recorder's court.

MCL 600.1011(1). Should any judicial circuit not develop a plan by July 1, 1997, the Supreme Court of Michigan "shall develop and implement the plan for that circuit." MCL 600.1011(2).

⁴National Council of Juvenile and Family Court Judges, Publication Development Committee, Victims of Child Abuse Project, Honorable David E. Grossmann, Chairman, *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, Nevada: National Council of Juvenile and Family Court Judges 1995). These standards which address all aspects of a juvenile court's handling of abuse and neglect cases will be discussed in greater detail as specific assessment findings and recommendations are related.

who are relatively well-educated on child welfare concerns, had previous experience in the field prior to coming to the bench, and have exhibited leadership and commitment to improving the lives of children and their families. If the overriding goal of a unified family court system is to better serve children and families, those involved in implementing this court structure must be cognizant of Michigan's role as a national leader in juvenile court reform⁵ and not dismantle those aspects of the current probate court system that are working well.

Regarding obstacles to effective court involvement in permanency planning, the areas in need of attention include: providing additional training to the judiciary, court staff, and attorneys due to the creation of family divisions in the circuit courts; enhancing the training and courts' quality control of attorneys representing children, parents, and the FIA; ensuring reasonable caseloads for judges, referees and attorneys, especially those in more urban jurisdictions with a high volume of cases; and increasing the court time allotted to abuse and neglect cases to enable the judiciary and parties to fully explore issues relevant to children's initial removal from their families and permanency planning.

Although this study's focus was probate court operations, it should also be recognized that the adequacy of services provided to families by the Family Independence Agency (FIA) and other agencies also has a profound impact on child protection and permanency planning. This report should be read in conjunction with the 1996 report of the Binsfeld Children's Commission, *In Our Hands*, which identifies and seeks to remedy problems in the child welfare system related to early intervention, permanency planning, training of caseworkers, caseload concerns, and child placement.⁶ Likewise, the September 1995 *Final Report of the State Bar of Michigan Children's Task Force* contains many recommendations that will impact on the quality of justice received by children in Michigan's courts.

In consultation with the project's Advisory Board⁷ and the SCAO, this report presents the assessment's findings and makes recommendations for system reform beneficial to the court and the

⁵For example, Kent County's Probate Court has received national recognition for its implementation of procedure and practice that allow for timely and expedited permanency planning decision making. Hardin, M., Rubin, H.T., Baker, D.R., *A Second Court That Works: Judicial Implementation of Permanency Planning Reforms* (Washington, D.C.: American Bar Association Center on Children and the Law 1995).

⁶Binsfeld Children's Commission, *In Our Hands* (Lansing, Michigan: July 1996).

⁷The membership of the Project Advisory Board is listed in this report's preface pages.

families that come before it.⁸ Appendix I to this report outlines all recommendations made in the body of the document.

⁸All recommendations are applicable not only to probate courts, but to any family or other Michigan court that will have jurisdiction over child abuse and neglect matters in the future.

II. MICHIGAN'S STATUTORY FRAMEWORK⁹

In order to fully understand this assessment and its recommendations, it is important that a general overview of Michigan law relevant to abuse and neglect cases be presented. As will be explored further in this report, Michigan's statutory framework requiring frequent reviews of children in the foster care system has been instrumental in moving court administrators and others to implement court procedure and practice that incorporates statutory standards. It has increased the likelihood that Michigan is in compliance with the mandated requirements of the federal Adoption Assistance and Child Welfare Act of 1980.¹⁰ (See Figure One for outline of Michigan law.)

Probate Court Jurisdiction

In Michigan, the juvenile court is currently a division of the probate court.¹¹ The probate court, along with the circuit court (the court of general jurisdiction), and the district court (like the probate court, a court of limited jurisdiction), comprise the three primary trial courts in the state. Michigan is the only state where, on a statewide basis, the juvenile court is a part of a separately-standing probate court. These county probate courts have jurisdiction to preside over child abuse and neglect proceedings including termination of parental rights, adoption, juvenile delinquency and status offenses, and such miscellaneous matters as proceedings regarding emancipation of minors. In addition, they address matters that are usually within the jurisdiction of probate courts nationwide, such as civil mental health proceedings, wills and estates, guardianship, and conservatorship. As

⁹The Michigan law summary consists of selected verbatim excerpts from Hardin, M., Rubin, H.T., Baker, D.R., *A Second Court That Works: Judicial Implementation of Permanency Planning Reforms* (Washington, D.C.: American Bar Association Center on Children and the Law 1995).

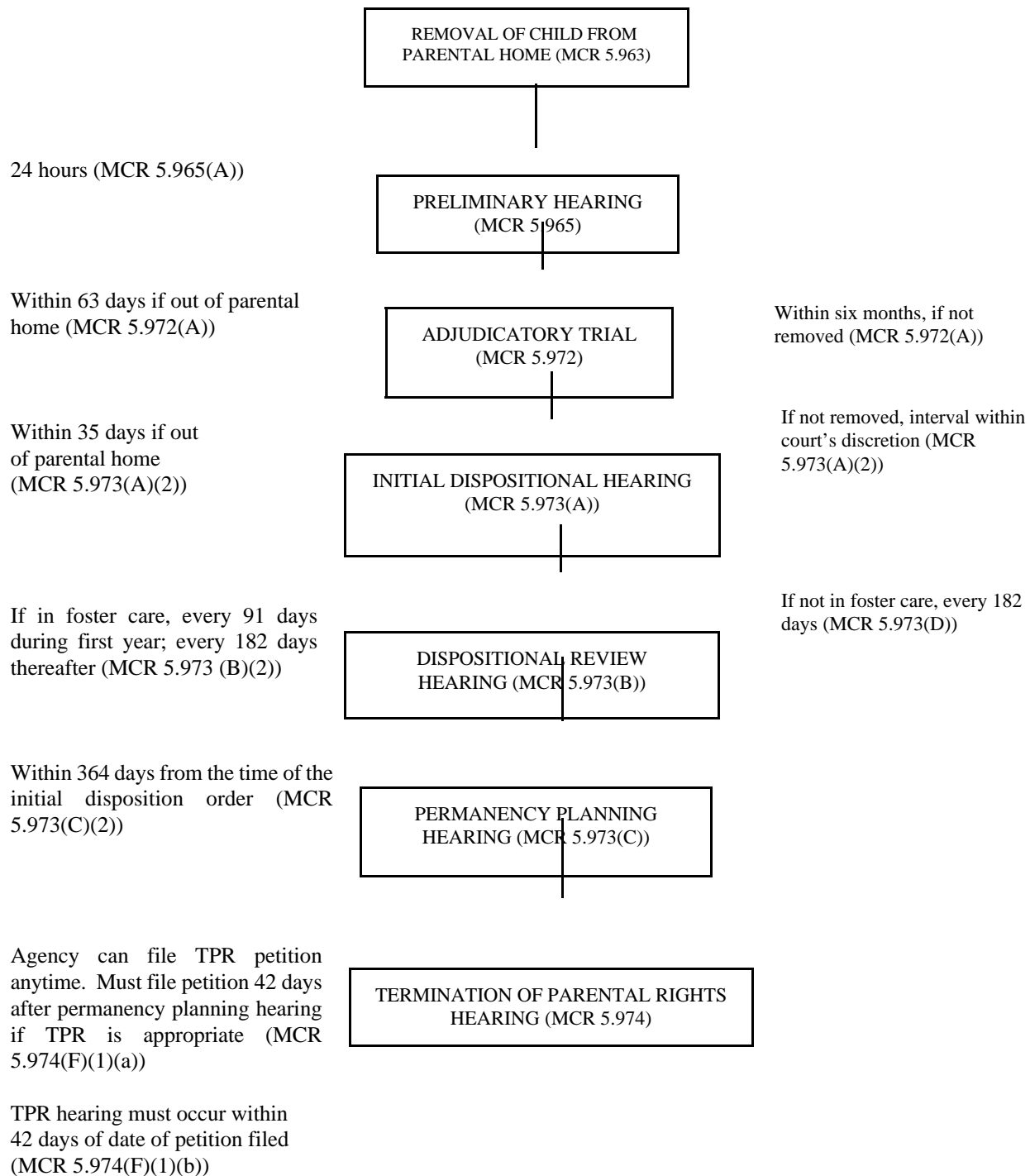
¹⁰P.L. 96-272, 42 U.S.C. §§ 620-627, 670-678. As a condition of receiving federal funds, besides the requirement that courts make a determination as to whether reasonable efforts have been made by a local department of social services prior to removal of a child, the federal law mandates that a hearing be held within 18 months after a child enters state-supervised foster care, and then "periodically" thereafter. This hearing is to determine the permanent plan for the child, which is to be one of the following: the child will be returned home; the child will be placed for adoption or legal guardianship; the child will be placed in permanent or long-term foster care because of the child's special needs or circumstances; or the child will be left in foster care for a specific period of time. If the child is 16 years or over, the hearing should also address the services needed to help the child make the transition from foster care to independent living. 42 U.S.C. §§ 675(5)(C), 627(a)(2)(B), 672(d). It should be noted that this permanency planning hearing is in addition to the mandatory six-month case plan reviews that can be conducted by a court or administrative body, such as a foster care review board. 42 U.S.C. § 675(5)(A)(B).

In enacting the permanency planning hearing requirement, Congress intended that the 18-month time limit would be a real deadline, by which time a definitive permanent placement would be established. It was expected that a definitive permanent plan would be established at that hearing in all but exceptional cases.

¹¹See footnote 3, *supra*, for discussion of unified family court implementation.

discussed earlier, effective January 1, 1998, probate court subject matter jurisdiction will come under the auspices of a family division of the circuit court. Circuit court judges and referees will handle all types of domestic relations matters (e.g., abuse and neglect, child custody, child support, visitation, and domestic violence). MCL 600.1001 et. seq.

PROCEDURAL FLOWCHART FOR CHILD ABUSE AND NEGLECT CASES UNDER MICHIGAN LAW
(CITATIONS ARE TO MICHIGAN RULES)*



*Reproduced with some modifications from Hardin, Rubin, and Baker, *A Second Court That Works*, 10.

Emergency Removal and Preliminary Hearings

Michigan law provides for a preliminary hearing within 24 hours of the child's removal from the parental home (Sundays and holidays are usually excepted). MCR 5.965(A). A police officer may remove a child from the home without a court order if there are reasonable grounds to conclude that the child's health, safety, or welfare is endangered. MCL 712A.14. A protective services worker must obtain court authorization before removing a child. This is usually done by obtaining a judge or referee's verbal approval over the telephone. MCR 5.963(B).

At the preliminary hearing, the court decides whether there is probable cause to believe that the child has been abused or neglected. If the court finds probable cause, it will authorize the filing of a petition. In determining whether the removal of the child is necessary, the court must consider whether:

- custody of the child with the parents presents a substantial risk of harm to the life, physical health, or mental well-being of the child;
- no provision of service or other arrangement except removal can adequately safeguard the child while in parental care;
- the child cannot be adequately safeguarded by ordering the alleged perpetrator from the family home; and
- conditions of child custody away from the parents are adequate to safeguard the health and welfare of the child

MCL 712A.13a(4); MCR 5.965(C)(2). Preliminary hearings are held to protect the constitutional rights of family members during emergency situations. MCL 712A.13a(2); MCR 5.965(B)(9).

At the time of the preliminary hearing, the court must begin to immediately work toward permanency for the child by evaluating efforts used to prevent the placement, and ordering appropriate reunification services when out-of-home placement is necessary. Within 30 days of the child's removal, the FIA must submit an initial service plan for the family to the court. MCL 712A.13(a)(8); MCR 5.965(C)(6).

Adjudicatory Hearings/Trials

An adjudicatory hearing or trial is held within 63 days of the child's placement outside the home by the court, or within six months if the child remains in the parental home. The court does have some discretion to postpone the hearing under specified circumstances. MCR 5.972(A). The

respondents have a right to a jury trial. MCL 712A.17(2); MCR 5.971(B)(3)(a). The burden of proof is on the petitioner, and an allegation must be proven by a preponderance of the evidence. MCR 5.972(C)(1).

The parents must be properly served if the adjudication of the case is to proceed. MCR 5.972(B). Notice may be provided by personal service. If the judge is satisfied that personal service is impracticable, he or she may order service by registered mail to a parent's last known address, or by publication, or both. The hearing date must allow 72 hours following personal service, five days following in-state registered mail, 14 days following out-of-state registered mail, or one week following a single publication in a local newspaper. MCL 712A.13; MCR 5.9713(C)(1).

Initial Dispositional Hearings

After a child has been found to be abused or neglected, Michigan law requires that the court hold an initial dispositional hearing within 35 days of the adjudicatory hearing or trial. MCR 5.973(A). Prior to the dispositional hearing, the FIA must submit an agency report and a case service plan for the family. Parents also have a right to notice of all dispositional review hearings and the permanency planning hearing. MCL 712A.19 & 19a; MCR 5.973. The court may hold a dispositional hearing without the respondents if they have been properly served. All relevant and material evidence, including hearsay, may be admitted at the hearing.

At the dispositional hearing, the court determines who will have custody of the child. In addition, the court must rule on the services to be provided to the parents and child, the child's placement, and permissible visitation between parents and child. MCL 712A.18f; MCR 5.973.

Dispositional Review Hearings

Michigan law requires that, after the initial disposition, the FIA must submit a revised case plan to the court every 90 days if the child is in an out-of-home placement. Subsequent to the initial dispositional review, further court reviews are held every 91 days during the child's first year of placement and every 182 days after the first year. MCL 712A.19(3); MCR 5.973(B)(2). In accordance with the law, the court has the discretion to schedule earlier reviews sua sponte or upon the petition of any party. MCL 712A.19(3)&(8); MCR 5.973(B)(3).

Respondents may be notified of proceedings through service of process or by scheduling the hearing on the record at the preceding hearing. All relevant and material evidence, including hearsay, may be admitted at the hearing.

The purpose of the dispositional review hearing is to determine whether progress is being made to comply with the previous court order and agency case service plan. MCR 5.973(B)(1). The court reviews whether appropriate services have been provided to the family and whether the parents have complied with and benefited from services. The court also evaluates visitation between parents and their children. After the hearing, the court may return the child home, modify the case service plan, or continue the prior dispositional order. MCL 712A.19(6) & (7); MCR 5.973(B)(7).

Permanency Planning Hearings

Under Michigan law, a permanency planning hearing must be held within 364 days from disposition, if the child is not returned to the parents or freed for adoption. MCL 712A.19a(1); MCR 5.973(C). The permanency planning hearing is held to review the status of the child and the progress being made toward the child's return home, or to show why the child should not be placed in the permanent custody of the court. MCL 712A.19a(2).

A child must be returned home unless a return would cause a substantial risk of harm to the child's life, physical health, or mental well-being. MCL 712A.19a(4); MCR 5.973(C)(4). Failure of the parent to substantially comply with the service plan is proof of "substantial risk." MCL 712A.19a(4)(a); MCR 5.973(C)(4)(a). If the court determines that the child cannot be returned home, the FIA must file a petition for termination of parental rights within 42 days. MCL 712A.19a(5); MCR 5.973(C)(4)(c). If the FIA can demonstrate that a termination is clearly not in the child's best interest, the court may extend the foster care placement. MCL 712A.19a(5) & (6); MCR 5.973(C)(4)(c) & (d).

If the court finds that the FIA has failed to establish that parental rights termination is not in a child's best interest and the child cannot be returned home at the time of a dispositional review or permanency planning hearing, the FIA must file a supplemental petition for termination of parental rights within 42 days of the hearing. MCR 5.974(F)(1)(a).

Transfers of Guardianship

Occasionally, a relative who has been caring for an abused and neglected child will be urged by a juvenile court to file a guardianship action. A probate court's juvenile division can order a guardianship within a child abuse or neglect case. Someone must bring a separate action in the probate court. In addition, a child, fourteen or older may file a petition for guardianship. MCL 700.424.

Termination of Parental Rights

A termination of parental rights (TPR) action may be brought at the initial dispositional hearing or any time thereafter. MCR 5.973(A). The purpose of a termination action is to free the child for adoption. Parental rights may be terminated on the following grounds:

- desertion of a child for more than 90 days;
- physical or sexual abuse likely to recur in the foreseeable future if the child is returned home;
- failure of the parent to rectify the conditions that led to the child's removal within 182 days and there is no reasonable likelihood that the condition will be rectified within a reasonable time considering the age of the child;
- the parent's long-term neglect of the child will continue into the foreseeable future, without regard to the parent's intent or blameworthiness;
- imprisonment of the parent for more than two years will deprive the child of a normal home;
- prior termination of a sibling and prior attempts to rehabilitate the parents have been unsuccessful; and/or,
- child will be harmed if returned.

MCL 712A.19b(3).

The TPR hearing must be held within 42 days after the supplemental petition for termination has been filed. The court may adjourn the hearing for up to another 21 days for good cause shown. MCR 5.974. Notice of the hearing must be served on the parties.

The petitioner has the burden of proof in seeking to terminate parental rights. MCR 5.974(A)(3). The petition's allegations must be proven by clear and convincing evidence. MCR 5.974 (F)(3). If the TPR petition is brought at the initial disposition, all material and relevant evidence may be introduced to establish the grounds. MCR 5.974(F)(2). If the TPR petition is filed after the initial disposition, hearsay evidence is admissible. Hearsay evidence is always admissible to prove that termination is in the child's best interest.

The court must issue a decision in a termination of parental rights action within 28 days after the hearing is completed. MCR 5.974(G). If parental rights are terminated, review hearings will continue every 182 days as long as the child remains in foster care. The purpose of these review hearings is to monitor the progress in obtaining a permanent placement for the child. MCL 712A.19c(1); MCR 5.974(J)

Limits on Voluntary Placements

Federal law limits payment of federal matching funds in regard to the length of time for children placed into voluntary foster care without court approval. The law provides that matching funds may be paid for no longer than 180 days, unless a court determines that continued placement is in the best interests of the child. Federal law also provides that there be a written agreement for any child voluntarily placed in foster care without court approval, and that if parents revoke the agreement the agency must return the child or persuade a court that keeping the child in foster care is in the child's best interests. 42 U.S.C. §§672(d) & 672(f); 45 CFR §1356.30(b).

Michigan law does not contain specific provisions addressing voluntary placements. Under FIA policy, a voluntary placement may only be accepted for up to 30 days, and very specific criteria apply. If a child should be in a voluntary placement and needs to continue in that placement for more than 30 days, the usual court process for abuse and neglect cases will be applied, including holding a preliminary hearing.

Legal Representation of the Parties

Children

The federal Child Abuse Prevention and Treatment Act of 1974 mandates that children who are the subject of neglect or dependency proceedings be appointed independent representation to protect their rights. 42 U.S.C. § 5106a(b)(6). Likewise, Michigan law requires the appointment of

an attorney for the child at every hearing in a child abuse and neglect action, including the preliminary hearing. MCL 712A.17c(7) & 722.630; MCR 5.915(B)(2) & 5.965(B)(2). The child may not waive his or her right to counsel. MCL 712A.17c(7).

Michigan law also provides that, in addition to appointing an attorney for the child, the judge may appoint a guardian ad litem for the child if the court finds the welfare of the child requires it. MCR 5.916. In counties in which a Court-Appointed Special Advocate (CASA) program exists, a CASA volunteer may be appointed as the child's guardian ad litem.

Parents

Parents who are named as respondents in abuse and neglect petitions are entitled to representation by an attorney under Michigan law. Parents must be advised of their right to the appointment of counsel even if they cannot afford representation at each hearing. If they are indigent, the court will appoint them counsel. MCL 712A.17c(4); MCR 5.915(B).

Petitioner

The prosecuting attorney for the county, if requested by the court, is required to review a child abuse and neglect petition for legal sufficiency and appear at all child abuse and neglect proceedings. MCR 5.914(A). If requested by the FIA or an agent of the FIA, the prosecuting attorney is statutorily required to act as a “legal consultant” to the FIA or the FIA’s agent in child protection cases. MCL 712A.17(5); MCR 5.914(B)(1).¹² Should the prosecuting attorney fail to appear as the “legal consultant” for the FIA or its agent, the FIA or its agent has the discretion to employ alternative counsel. MCL 712A.17(5); MCR 5.914(C)(1).

¹²For a discussion of the lack of legal clarity as to the prosecutor’s role in child protection proceedings, see Duquette, D., *Michigan Child Welfare Law: Child Protection, Foster Care, Termination of Parental Rights* (Michigan Department of Social Services 1994), 108-109.

III. ASSESSMENT METHODOLOGY

The Statewide Survey of Judges And Referees

Survey Design and Pilot Testing

In drafting the survey instrument, project staff relied primarily on survey instruments already developed by the American Bar Association Center on Children and the Law and the National Center For States Courts.¹³ They incorporated questions drafted for previous surveys, added some additional ones, and made numerous changes to address Michigan law, practice and procedure.

Prior to distributing the survey, staff produced several drafts for the SCAO, project Advisory Board and Michigan consultants to review. Advisory Board members were asked for their feedback on both the content and presentation of the questionnaire. They were requested to pay particular attention to whether the survey covered topics of relevance to court participants and other child advocates in Michigan.

In addition, a number of Michigan judges and referees were asked to pilot test the questionnaire and to make comments and suggestions throughout, particularly if there were items which were difficult to understand or issues missed. They were also asked to time how long it took to complete the survey. Based on their feedback, project staff made final changes to the instrument.

The final twenty-three page survey instrument included fourteen sections on the following subjects:

- Background and Training of Judges and Referees;
- Judicial Workload;
- Case Assignment and Scheduling;
- Reports;
- Hearings;
- Court Delays;
- Services;
- Reasonable Efforts;

¹³Of great help to the project team was the publication, Hardin, M., Elstein, S., Krochalk, P., & Smith, B., *Improving State Courts' Performance in Child Protection Cases: User's Manual For Conducting Your Court Assessment* (Washington, D.C.: American Bar Association Center on Children and the Law 1995).

- Representation of Parents;
- Representation of Children;
- Assessment of Court Participants (e.g., attorneys, caseworkers, CASAs, Jurists);
- Indian Child Welfare Act (ICWA);
- Foster Care Review Board;
- Judicial Input on Unique and Other Programs; and
- Court Input on Recommendations for Court Reform.

Sample Selection and Data Collection

An adapted Dillman¹⁴ method was used for survey distribution and data collection. Project staff worked with the SCAO to select the sample for this survey. All Michigan county probate courts (n=78) were a part of the sample. With a cover letter from the SCAO advising the courts of the importance of the assessment, the questionnaire was mailed to each Chief Judge to be filled out by the Chief Judges or his or her designee, as well as one representative referee if one were appointed in the county.

Initial distribution of the survey took place in late April 1996. About one month following initial distribution of the survey, the SCAO sent out a second mailing to those in the sample who had not yet replied. In July, in a final effort to increase the response rate, SCAO interns telephoned the county probate courts that had yet to respond, requesting that they return the completed survey in a timely manner. When necessary, interns sent blank copies of the questionnaire to the jurisdictions by facsimile. Several late respondents returned their completed questionnaires by facsimile as well. Data collection ended in early August 1996. Project staff developed a tracking method to identify respondents by number and classify completed surveys as they were returned.

A total of 68 judges (out of 78) and 45 referees (out of 57) responded within the specified time for reply. This reflects an overall response rate of 83.7 percent, a very high response rate, particularly considering the length of the survey (23 pages) and time estimated to fill it out (30 to 45 minutes). A few questionnaires were submitted after the deadline for responding and could not be

¹⁴Dillman, D.A., *Mail and Telephone Surveys: The Total Design Method* (New York: John Wiley 1978).

included in the analysis. Approximately twenty-one jurisdictions also returned a blank questionnaire, reporting that they did not have a referee. Upon receipt of the filled-out survey instruments, project staff input and analyzed the data. The survey findings are cited throughout this report.

Visits to County Probate Courts

As part of the court improvement assessment, it was essential that project staff be afforded the opportunity to observe child abuse and neglect hearings first-hand, in part to evaluate the validity of the statewide survey of judges and referees and to gain court participants' insight on court improvement. In consultation with the Court Improvement Program Advisory Board and representatives of the SCAO, it was decided that probate courts in three counties would be visited to enable project staff to interview court participants (e.g., judges, referees, court administrators, attorneys for parties, FIA personnel, CASAs, and FCRB representatives), observe court proceedings, and review a random sample of individual case files.

The counties selected were: Wayne County (Detroit), Jackson County, and Roscommon County. The Advisory Board and the SCAO agreed that the counties visited should be representative of urban, rural, and semi-urban jurisdictions. It was felt that counties with varying populations may have unique issues relevant to juvenile court reform that needed to be identified and assessed. Wayne County was chosen as the urban site because at least one-half of Michigan children in foster care reside there. Jackson and Roscommon Counties were selected, as the sites were relatively accessible to project staff and met the criterion for population size.

Staff of the ABA Center on Children and the Law and the National Center for State Courts, as well as SCAO interns and a Michigan consultant to the project, conducted site visits in May and August 1996. Project staff spent approximately five days in Detroit and approximately three days in the Jackson and Roscommon sites. An SCAO intern and a consultant to the project remained several additional days in Jackson County to complete case file reviews and court observation.

At the time of, and subsequent to, site visits, project staff wrote up their observations of visits for inclusion in this report. In order to clarify issues and speak with individuals who were not available during scheduled site visits, additional interviews were conducted via the telephone.

Interview findings were categorized for the most part as follows:

- Basic background information on county, including population size and composition;

- Probate court organization, staffing and budget;
- Number and types of cases handled;
- Court personnel caseloads;
- Court calendaring, assignment and processing of cases by hearing type (including use of computer technology);
- Legal representation of parties (FIA, children, parents);
- Court facilities and security;
- Unique and other programs addressing child abuse and neglect cases; and
- Juvenile court participants' observations and recommendations for change.

Individual Case File Review

Reviews of case files were conducted at the three sites selected for concentrated examination. Files were reviewed to collect information on the timeliness of major events for the case type. Ideally, this information should be available through a court's automated records system. However, the assessment team was advised that the information sought either was not available in the courts' computer records or that retrieving the information would require special programming. For these reasons, it was decided that it would be faster and easier to collect data by examining the courts' "paper" case files. The one exception to this method was the review of three automated reports provided by Wayne County's Juvenile Division.

File samples were comprised of cases originally filed in 1993. That year was selected because it is recent enough to reflect current court practices, but at the same time, case records should include a substantial number of actions that have reached resolution through dismissal of the action or permanency planning, including termination of parental rights.

Due to the relatively small number of cases filed each year in Roscommon and Jackson Counties, the samples included all abuse and neglect actions filed in 1993 in those courts.¹⁵ The Roscommon sample included 12 cases. The Jackson sample was made up of 49 cases. For Wayne County, the assessment team reviewed a random case sample of 98 cases, as well as the automated

¹⁵The court in Jackson County does not identify abuse and neglect actions separately from other juvenile matters so it was difficult to determine the total number of cases filed and ensure that all were included in the sample.

reports provided by the Juvenile Division.¹⁶ These reports included: a list of all petitions filed in 1993 (totaling 2907); a list of all open cases and their current status; and a list of all cases in which parental rights had been terminated with the date of termination.

Common instruments were used for all sites. The measures made included the following times:

- Date of removal to preliminary hearing date;
- Removal or preliminary hearing date to the date the case was adjudicated;¹⁷
- Removal or preliminary hearing date to disposition;
- Adjudication to disposition;
- Removal to first review hearing;
- Disposition to first review hearing;
- Average times between review hearings; and
- Removal to termination of parental rights.

In addition to times between events, measures were made of the length of time children spent in foster care. For purposes of the sample, the end of placement was the date the child returned home, the date the child entered a permanent placement, the date a termination of parental rights order was made, the date the child reached majority, or the date the case was closed.

Counts were made of the number of times adjudicatory, dispositional, and termination hearings were continued and the length of time that passed between the first scheduled date for the

¹⁶The original plan in Wayne County was to randomly sample 200 cases. However, 102 of the randomly selected paper files were not available for assessment. Project staff had some concern that the 102 unavailable case files might differ in certain key characteristics compared with the available 98 case files and bias the sample results. For example, the cases from the unavailable files might be on judges' or referees' desks because they were more complex and problematic. This proved not to be the case. A comparison of time intervals from the sampled 98 cases and the total population of 2907 cases showed that the characteristics of the 98 cases are a reflection of the total population. This congruency between the sample and the population is evidence that available and unavailable samples do not differ in key characteristics and that the 98 cases are an accurate sample of the total. It should be noted that the unavailable files could have been retrieved through the use of the Juvenile Division's computerized case tracking system. Internal court procedure requires clerks or anyone removing a file from the central file room to enter the file's location into the computer system.

¹⁷Removal was used as the starting date for measurements for children in out of home placement and the preliminary hearing date for children who were not removed.

event and the date on which it actually occurred. The percentages of hearings of each major event type that were uncontested or contested also were calculated. The sample also provided information on the timeliness of notice of the proceedings to parents and the rate of attorney appointments for parties.

IV. INTRODUCTION TO MAJOR FINDINGS AND RECOMMENDATIONS

One aspect of the statewide evaluation is a comparison of current laws and practices to federal requirements and the recommendations of national experts for ideal practices in managing the judiciary's child abuse and neglect caseload. Two relatively recent publications will be cited in discussing model standards for case handling. The first is *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*¹⁸ (hereinafter "The Resource Guidelines") endorsed by the National Council of Juvenile and Family Court Judges (NCJFCJ), the Conference of Chief Judges, the Conference of State Court Administrators, and the American Bar Association. The second source for comparison, one that is particularly relevant to examining court practices in Michigan, is *A Second Court That Works: Judicial Implementation of Permanency Planning Reforms*¹⁹ which is a comprehensive assessment of the Kent County Probate Court's handling of child abuse and neglect cases.²⁰

The Resource Guidelines are based on the insight of the nation's juvenile court judges who are members of the NCJFCJ, representatives of the National Conference of Chief Justices, the American Bar Association (ABA) Judicial Administration Division, as well as the staff of the NCJFCJ, its research arm the National Center for Juvenile Justice, the ABA Center on Children and the Law, and the Hamilton County Juvenile Court of Cincinnati, Ohio. As stated in the Resource Guidelines, the guidelines "are recommended for use by judges, court personnel, social service workers, attorneys and related professionals [to] ensure that as many children as possible have stable, caring, and supportive families, not only during their early years, but for a lifetime."²¹ The overriding principle of the guidelines is that child abuse and neglect cases must be a court priority if timely and thoughtful case decision-making is to occur in the cases of our most vulnerable citizens.

¹⁸National Council of Juvenile and Family Court Judges, Publication Development Committee, Victims of Child Abuse Project, Honorable David E. Grossmann, Chairman, *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, Nevada: National Council of Juvenile and Family Court Judges 1995).

¹⁹Hardin, M., Rubin, H.T., Baker, D.R., *A Second Court That Works: Judicial Implementation of Permanency Planning Reforms* (Washington, D.C.: American Bar Association Center on Children and the Law 1995).

²⁰For the most part, the Kent County Probate Court has established procedure and practice that model the Resource Guidelines and have been instrumental in facilitating the expeditious implementation of permanency plans. Discussion of Kent County Probate Court's practices will be briefly highlighted in this report where appropriate. For a more in-depth review of that court, one should refer to that study's report cited above.

²¹National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 8.

In addition to the above-cited publications, recommendations incorporate the concerns of the Michigan State Court Administrative Office (SCAO), the Project Advisory Board, and the individuals interviewed at the three county sites. They also specifically address Recommendation 60 of the Binsfeld's Children Commission that "[t]he FIA and the State Court Administrative Office (SCAO), through the Court Improvement Project Advisory Committee, shall explore ways to make quarterly review hearings on neglect and abuse more effective."²²

This report's following sections outline the NCJFCJ's Resource Guidelines and evaluates, in light of the assessment's findings, whether Michigan probate courts' handling of abuse and neglect cases is in compliance with the guidelines. In so doing, observations and recommendations coming out of this project's site visits and the Kent County Probate Court report are also discussed when applicable.

²²Binsfeld Children's Commission, *In Our Hands* (Lansing, Michigan: July 1996), 111.

V. RECOMMENDATIONS ON CALENDARING FOR ONE FAMILY - ONE JUDGE

RECOMMENDATION 1.

The Michigan Supreme Court and SCAO should ensure that a direct calendaring system of case assignment in child abuse and neglect cases be established and maintained in all counties.

Commentary:

The SCAO should work with those few jurisdictions in the state that are reporting that the same case is assigned to multiple judicial officers to determine whether in fact this is actually happening, and if it is occurring, to encourage the replication of case assignment practices being used in other parts of the state that adhere to the "One Family-One Judge" guideline.

The Resource Guidelines support the implementation and use of "direct calendaring," the system of case assignment in which one judicial officer is assigned to a child or a family throughout the life of a case, as opposed to the "master calendaring" system in which multiple judicial officers are assigned. Given the complexity and long-term nature of abuse and neglect cases, the Guidelines state "[d]irect calendaring enables judges or judicial officers to become thoroughly familiar with the needs of children and families, the efforts over time made to address those needs, and the complexities of each family's situation[,] thereby making it "more likely [they will] make decisions consistent with the best interests of the child."²³

Michigan's Compliance with Guideline

With some exceptions, primarily related to the transfer of cases after preliminary hearings, Michigan's probate courts appear to be adhering to the concept of "One Family - One Judge." The statewide survey of judges and referees revealed that the majority of judges and referees from large jurisdictions reported that one judicial officer hears the preliminary hearing and then the case is reassigned to another judicial officer for the life of the case. Judges and referees from smaller jurisdictions differed in their response in that the majority of judges reported that a single judicial officer presides over the entire case while the referees described the preliminary hearing case transfer

²³National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 19.

system. This finding may indicate that, in smaller jurisdictions with both judges and referees, the referee often presides over the preliminary hearing, with the case then being transferred to a judge. In jurisdictions with no referees, one judge handles all proceedings in a particular case.

The state survey also found that only 2.2 and 9.5 percent of judges in smaller and larger jurisdictions,²⁴ respectively, reported that the same case is assigned to multiple judicial officers. It should be noted that a higher percentage of referees (33.3 percent) from large jurisdictions indicated that the same case is assigned to multiple officers.

Site visit findings confirm the statewide survey results on the issue of continuity of representation. In contrast to other states' large urban centers, the Wayne County, Probate Court, Juvenile Division has implemented written case assignment procedures that increase the probability that in the great majority of hearings, a judge or referee familiar with the case will preside over it. Generally, a single judicial officer will hear a case from the time of the child's initial removal until the case is closed (e.g., permanency planning implemented). The exceptions to this rule are cases in which a referee is initially assigned and a party to the proceedings requests a judge, post-termination reviews over which visiting referees preside, cases which are reassigned at the time of the preliminary hearing if they are identified as being opened and having a history with the court, and parental rights termination trials that referees do not hear.

In addition, in Wayne County, every effort is made to bring the cases of sibling groups before the same judge or referee. Should one judicial officer hear a preliminary hearing and identify the child as being part of a sibling group already in the system, that child's case will be transferred to the judicial officer already assigned to the family. Likewise, if a child who has been adjudicated abused and neglected later becomes the subject of delinquency proceedings, his or her case will be assigned to the judge or referee who handled the abuse and neglect case. Both court files will be provided to the court.

In Jackson and Roscommon Counties, continuity of case assignment is more the rule than the exception. In Roscommon County, one judge presides over all stages of individual cases in both abuse and neglect and delinquency matters. In Jackson County, which may be reflective of many

²⁴Size of jurisdiction was measured by number of cases handled by judges and referees. Small jurisdictions were ones in which the average annual caseload per judge was zero to 1,000 cases annually; large jurisdictions were ones in which the annual caseload per judge was 1,000 plus cases.

Michigan counties, a referee handles most of the preliminary hearings with those cases being later transferred to the full-time judge.

Individual case file review support interview findings. In Jackson County, of a sample of forty-nine cases (all abuse and neglect actions filed in 1993), 46 percent of cases were heard by one judicial officer, 52 percent were heard by two, and 2 percent were heard by three. In Roscommon County, a review of all twelve abuse and neglect actions filed in 1993 revealed that 91.7 percent were heard by one judicial officer and 8.3 percent by two.

Given that the Resource Guidelines recommend that one judicial officer should preside over the life of a case, the issue of cases being transferred from referee to judge after preliminary hearings needs to be addressed given the widespread use of this practice throughout Michigan. This system of case transference is not the ideal and every effort should be made to establish procedures, such as those implemented in Wayne County, that assure continuity of representation in most cases. As reported in the aforementioned study of the Kent County Probate Court, which has a case assignment system similar to Jackson County, the availability of referees to assist judges in the handling of child abuse and neglect caseloads can "materially assist the court's efficiency."²⁵ Similarly, the Resource Guidelines state:

The use of judge-supervised judicial officers [referees] can be an appropriate alternative when judges, particularly in large urban areas, are faced with increasing child abuse and neglect caseloads. The use of judicial officers can provide several advantages. [T]he use of judicial officers is cost-effective, significantly increasing the staffing resources needed to move these cases through the system in a timely manner with close judicial oversight. By reducing hearing costs, the use of judicial officers allows a court system to devote more time to each case, resulting in lower caseloads, fewer delays and closer monitoring of cases.²⁶

These statements should not be read to mean that referees should be randomly assigned to other judges' or referees' cases. Though the random assignment of cases might appear to be efficient, the quality of hearings or permanency planning decision making will be detrimentally impacted with children remaining under the court's jurisdiction for longer periods of time.

²⁵Hardin, Rubin, & Baker, *A Second Court That Works*, 23.

²⁶National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 21-22.

VI. RECOMMENDATIONS ON CASE FLOW MANAGEMENT: SPECIALIZED COURTS AND TRAINING

RECOMMENDATION 2.

The Michigan Judicial Institute and SCAO should develop and implement training for judges and referees at the time they are elected, appointed, or assigned to the bench²⁷, and periodically thereafter. This training should be mandatory for all judges and referees, as well as court administrators and other court personnel and should focus on permanency planning issues.²⁸

Commentary:

As a unified family court is established, it is critical that the present level of probate court specialization in the handling of child abuse and neglect cases be maintained.

This can be done through training on permanency planning issues such as case plan evaluation, the court's role in monitoring compliance with its orders and agency case plans, and ethnic and cultural issues relative to child abuse and neglect cases. This training should be provided to all judges and referees assigned to the family division of the circuit court.

As related in the Resource Guidelines, case flow management techniques have been developed to address the problem of litigation delays. Effective case flow management systems are of particular importance to the processing of child abuse and neglect cases because unnecessary delays in the scheduling and conducting of hearings means that a child, usually placed in a foster care home or institutional placement, will languish unnecessarily in the child welfare system not knowing the possibilities of permanency. The Resource Guidelines indicate that “[c]ase flow management also helps the court to monitor the agency to make sure the case is being moved diligently and

²⁷ Recommendations made throughout this report should be made applicable to all judges who will ultimately be family court judges and who will handle child abuse and neglect cases. This includes all recommendations referring to the judges and referees.

²⁸For a resource manual on topic, see Howze, K., *Making Differences Work: Cultural Context in Abuse and Neglect Practice for Judges and Attorneys* (Washington, D.C.: American Bar Association Center on Children and the Law 1996).

decisively toward completion.”²⁹ One of the underlying principles of case flow management is judicial leadership and commitment.³⁰

The Resource Guidelines cite a variety of factors indicative of judicial commitment to timely decision making in child abuse and neglect cases. These factors include: judicial leadership in communicating with and educating court staff, attorneys, social workers, and others about the importance of timely permanency planning; establishing court procedures and practices that result in the expeditious and timely handling of cases; and ensuring that those court procedures and practices are in fact being followed.³¹

Though not specifically addressed in the statewide survey, its results are telling on the issue of judicial commitment. One could argue that a court that is experienced and trained on child welfare related concerns will be more likely to convey to its staff and others the importance of permanency planning in the lives of children. Given that Michigan's probate courts are in essence specialized courts, judges and referees handling juvenile cases are likely to be better versed in the handling of abuse and neglect cases than their counterparts in some other states who may be rotated in and out of a juvenile docket or may rarely hear an abuse and neglect case. A specialized court is also more likely to attract individuals to the bench who have interest and experience in the subject matter.

The statewide survey supports the above-stated propositions. Prior to joining the bench, the majority of judges and referees in both large and small jurisdictions had been attorneys representing one of the parties (e.g., prosecuting attorney, child, and/or parent) in abuse and neglect cases. A relatively high percentage (47.8%) of referees in smaller jurisdictions had been employed with the local department of social services. Regarding those individuals with no previous experience in child welfare matters, in small jurisdictions, 10.9 percent of judges and 21.7 percent of referees reported having had no experience, and in larger jurisdictions, 13.6 percent of judges and 14.3 of referees had no experience.³² (See Table One at end of this section.)

²⁹Ibid, 19.

³⁰Ibid, 20.

³¹Ibid.

³²This raises the issue of whether individuals with no experience in child welfare should be appointed to a specialty bench.

The survey results also reflect the percentage of judges that have received training in the following areas:

- legal and procedural aspects of child abuse and neglect actions (85.3%);
- psychological and medical issues of child abuse and neglect (60.3%);
- requirements of the Indian Child Welfare Act (55.9%);
- child development (48.5%);
- federal requirements related to child abuse and neglect (44.1%);
- drug abuse and its impact on parenting (38.2%);
- special education (35.5%);
- provision of services to children diagnosed with mental, developmental, or physical disabilities (30.9%);
- service interventions for addressing abusive/neglectful behavior (30.9%);
- evaluating case plans (23.5%);
- diversity training related to child abuse and neglect (23.5%); and
- no training (9%).

Among referees, prior training mirrored that of the judges with two significant exceptions: 73.3 percent of the referees had child development training and 60.0 percent had been trained on drug abuse issues. (See Table Two at end of this section.)

Although the statistics on training reflect that the majority of the bench has been educated on various aspects of child abuse and neglect cases, the three aspects most relevant to permanency planning, evaluating case plans, federal requirements and diversity issues (e.g., may impact on decision-making related to kinship care) fall short of expectations. Judges and referees also recommended additional training on the following topics: service interventions for addressing abusive and neglectful behavior; provision of services to children with mental, developmental, or physical disabilities; drug abuse and its impact on parenting; legal and procedural aspects of child abuse and neglect actions; psychological and medical issues; the handling of putative fathers; sexual abuse victim and perpetrator issues; and computer training, in particular the use of the Internet.

In all three counties visited, project staff found probate court judges, referees, and administrators to be very knowledgeable about the court's role in ensuring the timely implementation of permanency plans and receptive to making improvements,³³ in their courts' handling of abuse and neglect cases. All judges and referees interviewed were aware of Michigan's statutory framework for frequent reviews, as well as federal "reasonable efforts" and other requirements. Almost all stated, without prompting, that holding frequent reviews of a child's case resulted in an more effective monitoring of the progress being made by parties to implement permanency plans. In fact, the probate judge in Roscommon County perceived an urgent need in his community for preventive services for high risk delinquents. He was instrumental in identifying and obtaining funding to support the "Intensive Day Treatment Program," designed to work with delinquent youth in their own homes.

One would have speculated, especially in a county like Wayne with a high volume of cases, that court personnel would have viewed frequent hearings as burdensome. This was not the case, as many judicial officers believed that frequent reviews, including permanency planning hearings, were making a difference in moving children toward reunification with their families, adoption, or other permanent living arrangements. From court observation, it was apparent that many judges and referees were communicating to attorneys and parties coming before them, the need to address permanency concerns.³⁴

Likewise, Kent County Probate Court's success in becoming a model court for the country could not have been accomplished without the strong leadership of the probate court bench and the support of court personnel and the community. Since the late 1960's, the Kent County Probate Court has been "on the cutting edge of a series of progressive developments concerning courts and

³³In mid-1995, the juvenile register at the time initiated discussion with the DSS (now FIA) regarding the problem of a significant number of DSS workers not filing progress reports with the court as required by a local court rule. A memorandum from the court was submitted to DSS indicating the criteria for contempt of court and that sanctions would be imposed if reports were not submitted to the court in a timely manner, 48 hours of the hearing. To facilitate the filing of progress reports, a desk with a fax machine with a special number was set up at the courthouse to receive reports. In January 1996, the court started to act and an estimated 200 case workers were held in contempt of court in the most "egregious" cases for failing to file timely progress reports. Separate contempt hearings were held. No contempt orders were appealed. It was the former juvenile register's impression that the contempt process resulted in the more timely submission of progress reports.

³⁴Enhancing the quality and effectiveness of permanency planning and other review hearings will be addressed in a later section of this report. Though it was clear that judicial officers and others were committed to the concepts of permanency planning, recommendations will be forthcoming on how current practice and procedure can be modified to make review hearings an even more effective instrument in moving children toward permanency.

children[.]" including piloting innovative judicial case review and permanency planning procedures, initiating "broad-scale" multi-disciplinary training on permanency planning considerations, and being involved in legislative reform beneficial to children and families.³⁵ As stated in *A Second Court That Works*, "[a] presiding judge can do much to weld a coherent, consistent, and high standards approach to [child abuse and neglect] proceedings, though committed and respected court staff are necessary to implement these policies, provide needed information and training to children's agencies and attorneys, and [perform] active oversight of caseflow practices."³⁶

³⁵Hardin, Rubin, & Baker, *A Second Court That Works*, 61.

³⁶*Ibid*, 62.

TABLE ONE

Background Characteristics of Judges and Referees Responding to the
Michigan Court Improvement Survey by Size of Jurisdiction

		Size of Jurisdiction			
		Small (≤ 1000)		Large (> 1000)	
		Judges (N = 46)	Referees (N = 24)	Judges (N = 22)	Referees (N = 21)
Title of Respondent:		Percentage of Sample			
Probate Court Judge					
- Full-Time Juvenile		47.8	NA	66.7	NA
- Part-Time Juvenile		52.2	NA	33.3	NA
Attorney Referee					
- Full-Time Juvenile		NA	8.3	NA	57.1
- Part-Time Juvenile		NA	4.2	NA	14.3
Non-Atty Referee Full-Time Juvenile					
- Grandfathered		NA	37.5	NA	19.0
- Non-Grandfathered		NA	16.7	NA	4.8
Non-Atty Referee Part-Time Juvenile					
- Grandfathered		NA	29.2	NA	4.8
- Non-Grandfathered		NA	4.2	NA	0.0
Nature of Practice Prior to Joining the Court: ^a		Percentage "Yes"			
General Practice		93.5	8.7***	63.6	28.6**
Domestic/Family	56.5	8.7***		59.1	23.8**
Juvenile/Child Abuse & Neglect		52.2	8.7***	50.0	52.4
Juvenile/Delinquency		54.3	8.7***	59.1	52.4
Civil, Non-Domestic		60.9	8.7***	45.5	42.9
Criminal		63.0	8.7***	68.2	47.6
Experience in Child Abuse & Neglect Proceedings Prior to Appointment to the Court: ^a					
No Experience		10.9	21.7	13.6	14.3
Prosecuting Attorney for "People"		47.8	8.7***	54.5	23.8*
Other Employ w/Child Welfare/DSS		2.2	47.8**	13.6	4.8
Attorney Representing Parents		63.0	8.7***	45.5	33.3
Attorney for Children/GAL/CASA	60.9	8.7***		40.9	33.3
Foster Care Review Board Member		0.0	0.0	0.0	0.0

a

Respondents were directed to check all that apply; therefore, totals exceed 100 percent.

* $p < .05$. ** $p < .01$. *** $p < .001$.

TABLE TWO

Prior Training of and Future Training Desired by Judges and Referees in the
Areas of Child Abuse and Neglect and Related Child Welfare Concerns

	Prior Training		Future Training Desired	
	Judges (N = 68)	Referees (N = 45)	Judges (N = 68)	Referees (N = 45)
	Percentage "Yes"			
No Training	8.8	4.5	1.5	0.0
Legal and Procedural Aspects of Child Abuse and Neglect Actions	85.3	72.7	57.4	63.6
Federal Requirements Related to Child Abuse and Neglect Actions	44.1	33.3	47.1	53.3
Requirements of the Indian Child Welfare Act	55.9	53.3	48.5	42.2
Child Development	48.5	73.3**	48.5	35.6
Psychological and Medical Issues of Child Abuse and Neglect	60.3	68.9	57.4	48.9
Diversity Training/Special Ethnic and Cultural Issues Related to Child Abuse and Neglect	23.5	35.6	41.2	44.4
Special Education	35.5	46.7	52.9	42.2
Provision of Services to Children Diagnosed with Mental, Developmental, or Physical Disabilities	30.9	48.9	63.2	48.9
Drug Abuse and Its Impact on Parenting/Treatment Options	38.2	60.0*	58.8	57.8
Evaluating Case Plans	23.5	33.3	45.6	44.4
Best Service Interventions for Addressing Abusive/Neglectful Behavior	30.9	46.7	66.2	68.9

*Prior training experiences of the judges and referees were significantly different at the .05 level.

**Prior training experiences of the judges and referees were significantly different at the .01 level.

VII. RECOMMENDATIONS ON CASE FLOW MANAGEMENT: STANDARDS AND GOALS

Written Policy and Procedure/Tracking Systems

RECOMMENDATION 3.

To ensure the timely and expeditious implementation of permanency plans, all courts handling abuse and neglect cases should have written policy and procedures governing timely hearings and decision making that mirrors Michigan's statutory mandates.

RECOMMENDATION 4.

Tracking systems should be implemented in all courts in which appropriate court personnel are designated to track the amount of time it takes a case to proceed through various stages of child neglect and abuse proceedings, identify the reasons for delay, and move court personnel and parties to a more expeditious handling of a case.

Commentary:

The Resource Guidelines provide that "[s]pecific and detailed timetables for the different stages of litigation are essential to an effective delay-reduction program."³⁷ Michigan's statutory framework requiring frequent reviews of children in the foster care system has been instrumental in moving court administrators to implement court procedure and practice that incorporates statutory mandates. The requirement of frequent reviews mandates that judicial officers cannot forget about children under the court's jurisdiction and hopefully, ensure that in most cases, the court is monitoring the provision of services to children and families. Even calling one of the hearings a permanency planning review conveys the message to all court participants that the court will make a determination as to where a child will live permanently. In addition, "[t]he strictness of Michigan law concerning hearings to achieve permanency for foster children increases the likelihood of consistent technical compliance with federal requirements for mandated foster care review hearings."³⁸

³⁷National Council of Juvenile and Family Court Judges, *The Resource Guidelines*, 20.

³⁸Hardin, M., Rubin, T.H., Baker, D.R., *A Second Court That Works*, 93.

Similarly, Michigan's termination of parental rights laws require that termination hearings be held within forty-two days after a supplemental petition for termination has been filed with the court having discretion to adjourn a hearing for up to another twenty-one days for good cause shown.³⁹ Within twenty-eight days after a termination trial has been completed, the court must issue its decision in the case.⁴⁰ If the court terminates parental rights, the case is then reviewed every 182 days as long as the child remains in foster care.⁴¹

In order to make standards binding, the Resource Guidelines call upon courts to modify their court rules to incorporate time frames and deadlines for the completion of hearings. Michigan has gone one step further by incorporating strict time frames into its state child abuse and neglect statutes. However, it may be appropriate for probate courts to develop written policy and procedures specific to their jurisdictions that ensure that timely hearings are conducted.⁴² The statewide survey did not inquire as to whether individual courts had written policy and procedure on timely hearings and decision making. Given that each court may have unique needs related to staffing and volume of cases, these written policies and procedures should be developed keeping in mind probate courts' differences, but at the same time ensuring that judicial personnel comply with statutory mandates.

As detailed in Tables Three through Ten below, individual case file review provides some insight into how three county probate courts are complying with the above-stated statutorily mandated time frames.⁴³ For the following tables, column one describes the data contained in the table. The second column is the number of cases included in the particular measure. The third column shows the median time between events. The fourth column indicates the time between events at the 75th percentile figure. In other words, for time measures, 75 percent of the sample

³⁹Ibid, 53.

⁴⁰Ibid.

⁴¹Ibid.

⁴²Kent County has implemented procedures that provide for strict, if not stricter adherence to statutory time frames for hearing completion. For instance, as opposed to the adjudication taking place within 63 days of the child's placement as allowed under Michigan Court Rules, the court abides by the previously mandated 42-day limit. In addition, a court supervisor maintains a monthly report to monitor whether adjudicatory hearings are completed. This individual contacts the attorneys for the parties and the FIA to determine the reasons for delays and monitors cases in which a judge has granted "for cause" adjournments beyond the 42-day limit. Ibid, 58.

⁴³For supplementary information on case file review, refer to this report's earlier section on the assessment's methodology.

reached the event in less than the number of days shown, but 25 percent of the sample needed more time. The next two columns show the minimum and maximum measures found in the sample.

For the adjudicatory and dispositional phases of proceedings, Wayne⁴⁴ and Roscommon County generally met time requirements for an estimated fifty percent of the cases sampled with time lengthening substantially for approximately twenty-five percent of cases. Cases in Wayne County appeared to move relatively swiftly to adjudication, but delays appeared at the dispositional phase. The Roscommon sample was slow to reach adjudication, perhaps the result of the relatively high percentage of actions set for contested hearings included in the sample. Case file review revealed that 77.8 percent of adjudicatory hearings were contested in Roscommon County, in contrast to 22.1 percent for Wayne County and 14.3 percent for Jackson.

In the great majority of cases, at least 75 percent for the adjudicatory and dispositional phases, Jackson County was in compliance with statutory time frames. In evaluating time lapse data, one should keep in mind that Michigan law does specify grounds for postponement of adjudicatory proceedings and allows dispositional proceedings to be rescheduled for “good cause” shown.⁴⁵ The granting of postponement requests would increase the time between hearings.⁴⁶

⁴⁴It should be noted that since 1993, Wayne County’s Juvenile Division has implemented written procedures that appear to be making a difference in the handling of abuse and neglect cases. The procedures provide referees with a uniform approach to the scheduling of original and open cases for preliminary, probable cause, pretrial, and in certain cases, adjudicatory and dispositional hearings. They also address the appointment of attorneys for children and parents, the taking of stipulations at the preliminary hearing, and requests for jury trials. In addition, the Juvenile Register and the Chief Referee carefully review statistics on the caseloads of judges and referees, respectively, to determine whether or not they are in compliance with statutory time frames for conducting hearings. If tracking information on timeliness of hearings is to be useful, such information must be shared with those individuals with the authority to effectuate change. Wayne County Juvenile Division’s individual case review findings have to be analyzed keeping in mind relatively recent changes in court administration and procedure.

⁴⁵In accordance with MCR 5.972(A), an adjudicatory hearing may be postponed if the parties agree to a postponement, the process cannot be completed, or the testimony of a “presently unavailable” witness is required. Unlike the dispositional phase, parties do not have the option of arguing the “good cause” postponement ground as provided by MCR 5.973(A)(2).

⁴⁶The frequency of case adjournments is discussed, *infra*.

TABLE THREE

Removal/Petition to Adjudicatory Hearing	Number of Cases	Number of Days					State law/rule
		50th	75th	90th	Min	Max	
Wayne (Detroit)	88	64	122.5	194.8	0	686	64 days
Jackson	38	42.5	56	73.4	3	185	
Roscommon	7	80	165		6	483	

TABLE FOUR

Adjudication to Dispositional Hearing	Number of Cases	Number of Days					State law/rule
		50th	75th	90th	Min	Max	
Wayne (Detroit)	79	42	94	141	0	420	35 days
Jackson	38	36	36	57	5	408	
Roscommon	6	34	63.75		0	144	

Michigan law requires the court to review the case plan no later than 91 days after disposition and subsequently, every 91 days during the child's first year in out-of-home placement. Thereafter, subsequent review hearings are to be held every 182 days with a permanency planning hearing being conducted once every 364 days. Overall, the Jackson and Roscommon files indicate compliance with these requirements. The Wayne sample shows times slightly longer than permitted by the statute for the initial post-disposition case review.

TABLE FIVE

Disposition to First Review	Number of Cases	Number of Days					State law/rule
		50th	75th	90th	Min	Max	
Wayne (Detroit)	70	97	113.25	175.4	0	269	91 days
Jackson	37	91	91	99.4	35	357	
Roscommon	5	83	87.5		0	91	

No site was in compliance with a requirement that hearings on a TPR petitions occur within 42 days of the TPR's petition's filing date.⁴⁷ However, when the time permitted by statute from TPR petition to hearing (42 days) is aggregated with the time permitted from hearing to the issuance of a TPR order (28 days), the Roscommon and Jackson courts were close to the required time frames.

TABLE SIX

TPR Petition Date to TPR Hearing Date	Number of Cases	Number of Days					State law/rule
		50th	75th	90th	Min	Max	
Wayne (Detroit)	21	83	123.5	236.8	2	278	42 days
Jackson	12	44	66.25	180.7	0	181	
Roscommon	3	84			20	123	

TABLE SEVEN

TPR Petition Date to TPR Order Date	Number of Cases	Number of Days					State law/rule
		50th	75th	90th	Min	Max	
Wayne (Detroit)	23	106	259	330	0	387	70 days
Jackson	12	44.5	70.75	180.7	0	181	
Roscommon	3	84			20	123	

TABLE EIGHT

TPR Hearing Date to TPR Order Date	Number of Cases	Number of Days					State law/rule
		50th	75th	90th	Min	Max	
Wayne (Detroit)	30	19.5	99.75	244.4	0	434	28 days
Jackson	12	0	.75	13	0	16	
Roscommon	3				0	0	

In Wayne County, the times expended between petition filing dates and hearing dates to the issuance of TPR orders were substantially longer than the other two sites. One reason for delays in

⁴⁷The earlier study on Kent County's Probate Court revealed that termination of parental rights hearings were being conducted within 42 days of a TPR petition being filed. The approximately ten percent of TPR hearings that are adjourned usually begin within one to two weeks of the forty-two day limit. Ibid, 59.

Wayne County's TPR process may be the high number of adjournments of TPR hearings. Sixty percent of TPR hearings were continued in Wayne County. Twenty-five percent of cases were continued more than six weeks from the originally scheduled TPR hearing date⁴⁸. The data indicates that further examination of the possible causes of delay in TPR proceedings in Wayne County is warranted.

Timeliness of proceedings or the implementation of permanency plans can be further assessed by examining data on the length of time between a child's removal and the final issuance of a TPR order. As corroborated by previous tables, Table Nine indicates that when the permanency plan is adoption, at least as of 1993, Jackson and Roscommon County children in the great majority of cases will be freed for adoption less than a year from the date of their removal.

Even in a large, urban jurisdiction like Wayne County, the statistics are relatively good. In at least fifty percent of 1993 cases randomly sampled, in cases in which the permanency plan is adoption, children are freed for adoption (TPR order issued) within an estimated 21 months. Table Ten provides even more comprehensive data on the topic as it was compiled from a Juvenile Division's automated report on all cases in which a TPR petition was filed in 1993. Out of the 2907 cases in which new abuse and neglect petitions were filed in 1993, TPR petitions were filed in 518 (about 18% of the total filed). In approximately fifty percent of these cases, children were freed for adoption within 19 months.⁴⁹

Although Wayne County data are described as "relatively good," they do not constitute an ideal. In addition to diminishing adjournments in TPR proceedings, issues have to be addressed about whether permanency plans of adoption are being formulated early enough in the process so that TPR hearings can be scheduled sooner and that adoption is being considered as an option in all appropriate cases.

⁴⁸See Table Fifteen, *infra*, detailing percentages of TPR hearings with adjournments in each site.

⁴⁹According to the Kent County study, children for whom parental rights were terminated spent 14.5 months in care prior to the issuance of a court decision terminating parental rights. Moreover, children who were adopted spent an average of 19.4 months in foster care placements. *Ibid*, 60.

TABLE NINE

Removal to TPR Order Date	Number of Cases	Number of Days				
		50th	75th	90th	Min	Max
Wayne (Detroit)	29	638	839	980	21	1245
Jackson	23	325	450.25	797.6	91	845
Roscommon	3	309			302	654

TABLE TEN

Abuse and Neglect Petition Authorization Date to TPR Order Date (Wayne Only, Court Records System Data)	Number of Cases	Number of Days				
		50th	75th	90th	Min	Max
Wayne (Detroit)	518	575.5	832.5	982.1	27	1254

The Appellate Process

RECOMMENDATION 5.

The recommendations of the Michigan Probate Judges Association are incorporated herein and should be adopted. "The Michigan Probate Judges Association believes that reforms should be put in place which would result in closer monitoring of compliance with time limits and that steps can be taken to expedite termination cases that are appealed...." The Association "support[s] the following actions being taken to reduce delays in receiving appeal opinions in termination of parental rights cases:

1. **Restructure Court of Appeals reporting system to assure that:**
 - a. **The Probate Court is notified when time limits on appeals of termination of parental rights cases are not met.**
 - b. **The Supreme Court receives necessary reports to assure adherence to time limits by all courts.**
2. **Revise the Court Rules to require that the local Probate Court and interested parties receive:**
 - a. **Affidavits of service by court reporters for filing transcripts.**
 - b. **Correspondence between attorneys and the Court of Appeals of delays in time limits and filing of briefs.**
3. **The Supreme Court review how expeditiously termination cases should be heard and review all time limits in the Court Rules on appeals as to their reasonableness as well as the strength of the existing sanctions and, if appropriate, make necessary revisions of the Court Rules.**
4. **Michigan Probate Courts should develop methods to:**
 - a. **Place a higher priority on the completion of transcripts and expeditiously send the lower court record to the Court of Appeals.**
 - b. **Improve the appointment of counsel process to assure that attorneys comply with the time limits in the appeals process.**⁵⁰

Commentary:

Individuals familiar with Michigan's child abuse and neglect system report that a barrier to achieving permanency in children's lives are delays that currently occur after an appeal is taken to

⁵⁰*Resolution of the Michigan Probate Judges Association Regarding Delays in Termination Appeals from the Juvenile Court," Resolution 2, Unanimously adopted at MPJA Winter Conference, January 22, 1992.*

the Michigan Court of Appeals.⁵¹ In fact, based on a 1992 analysis of 378 TPR appeals by the Children's Charter of the Courts of Michigan (hereinafter "Children's Charter), the Michigan Probate Judges Association issued a unanimous resolution on January 22, 1992 supporting changes in Court of Appeals and Probate Court rules and procedure to expedite the handling of TPR appeals.⁵² As stated in the Resolution, the Children's Charter study found the "primary" delays involved the "filing of transcripts, appellate briefs, and the case being heard after appellee's brief is filed."⁵³ The Children's Charter reported that out of 378 cases reviewed, 27 took 500 days or more from the filing date of the Claim of Appeal to the appellate court's decision. For these twenty-seven cases, the periods during which transcripts and appellant briefs were filed accounted for an average of 187 days out of a 647 day average, about 29 percent of the total time.⁵⁴

As reflected in Table Eleven, given the relatively high percentage of TPR cases being appealed at least in three sites, it is essential that the appellate process be examined to ensure that children do not unnecessarily languish in legal limbo. One or two years may not seem like much time in the eyes of an adult, but to a child it can appear to be a lifetime. Moreover, the delayed issuance of an order unfavorable to a child who has bonded with his or her caretakers will result in needless trauma to the child should the child be forced to move from that placement⁵⁵.

⁵¹In his 1995-1996 annual report, the Michigan Children's Ombudsman stated the following: "The Ombudsman has found in 33 of 56 applicable cases, or 58.9 %, the appellate process should have been expedited. The Ombudsman recommends that the appellate process for termination of parental rights be accelerated." Richard S. Bearup, Ombudsman, *Children's Ombudsman Annual Report 1995-1996*, 55.

⁵²The Resolution's recommendations are repeated in this section's recommendations on Case Flow Management: Standards and Goals, *supra*.

⁵³*Resolution of the Michigan Probate Judges Association Regarding Delays in Termination Appeals from the Juvenile Court*, "Resolution 2, Unanimously adopted at MPJA Winter Conference, January 22, 1992.

⁵⁴Excerpts of report narrative provided by the Children's Charter of the Courts of Michigan.

⁵⁵It should be noted that Michigan Supreme Court Administrative Order, 1981-6, addresses the expeditious handling of TPR appeals. It states: "On order of the Court, it appearing that there is a need to expedite consideration of appeals terminating parental rights under the juvenile code, the clerk of the court of appeals and of this Court are directed to give priority to such appeals in scheduling them for submission to the respective courts."

TABLE ELEVEN

Appeals of TPR Orders	Number of Cases	Yes		No	
		Number	Percentage	Number	Percentage
Wayne (Detroit)	32*	4	12.5%	27	84.4%
Jackson	12	4	33.3%	8	66.7%
Roscommon	3	1	33.3%	2	66.7%

*No information available in one case file reviewed.

VIII. RECOMMENDATIONS ON CASE FLOW MANAGEMENT: SCHEDULING FOR CREDIBLE COURT DATES/COURT CONTROL OF CONTINUANCES

RECOMMENDATION 6.

The SCAO should ensure that as statewide court reorganization is implemented, court procedures and practices that are instrumental in diminishing delays in child abuse and neglect cases are maintained.

Scheduling Cases for Date and Time Certain

RECOMMENDATION 7.

The SCAO should work with those minority of probate courts that are not scheduling individual cases for a date and time certain. The SCAO should issue a reminder to all probate courts of the applicability of MCR 8.116 “Sessions of the Court” to the handling of child abuse and neglect cases.

RECOMMENDATION 8.

Pretrial conferences should occur in cases in which the parties anticipate a contest so that issues for litigation can be clarified and appropriate time set aside for the trial of the case.

Commentary:

The Resource Guidelines assert that most child abuse and neglect hearings should be scheduled by the court for a day and time certain and conducted on that day and time.⁵⁶ If a hearing is contested, it should be started on the day and time planned, and completed within a couple of days⁵⁷ (not tried over the course of one or several months). In cases likely to be contested, pretrial conferences should be scheduled to enable judicial officers and all counsel for the parties to identify issues likely to be tried, resolve service of process problems, and estimate trial time.⁵⁸ Attorneys for all parties (e.g., the FIA, children and parents) should also be appointed at the earliest stages of the

⁵⁶National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 20-21.

⁵⁷*Ibid.*

⁵⁸*Ibid.*

proceedings, the preliminary hearing, to ensure that delays will not result due to a party not having an attorney and an attorney not being fully apprised by the court of "firm" future court dates.⁵⁹

Moreover, hearings should be scheduled in open court so that attorneys and parties can be presented with a court order that clearly specifies the date and time of future appearances, as well as stating court participants' responsibilities prior to the next hearing date.⁶⁰ Courts should also have "firm and effective policies on continuances."⁶¹ As stated in the Guidelines, adherence to the above-described practices diminish hearing adjournments and waiting time for court participants prior to a case being heard, and "...can result in major reductions in government expenditures [and a] better use of judicial resources."⁶²

The statewide survey and site visits, including court observation and individual case file review, reflect that the majority of Michigan's probate courts are scheduling cases for a date and time certain. However, although cases are being scheduled for a date and time certain, the issue has to be explored as to whether too many cases are being scheduled at the same time. This seems to be an issue in approximately one quarter (28.6 percent of judges and 17.6 percent of referees) of larger jurisdictions where judicial officers block set all their cases at the same time for either a morning or an afternoon session. Block setting of a significant number of cases is likely to result in increased waiting time for attorneys and parties since not all cases can be heard at once and may create an attorney and case worker mindset that one can prepare for a case at the courthouse while one is waiting to have the case heard.

In small jurisdictions, 75.6 percent of judges and 79.2 percent of referees block set a small number of cases for a specific day and time (e.g., 2-3 per hour). In larger jurisdictions, the percentages of judges and referees block setting a small number of cases for a day and time certain decreases to 57.1 percent for judges and 64.7 percent for referees.

Regarding case adjournments, the statewide survey found continuances or delays occurred most frequently in the following types of hearings: parental rights termination, adjudicatory, further dispositional, and permanency planning hearings. However, survey respondents reported that

⁵⁹Ibid.

⁶⁰Ibid.

⁶¹Ibid.

⁶²Ibid.

continuances or delays in these hearings occurred "rarely" (1-10 percent of the time) in their courts. No one single factor was perceived by the majority of judges or referees as impacting on court delays that did occur. The primary factors affecting court delays "some" of the time (11-35%) were: failure to identify or locate parents; service of process on parents delayed; and witness not available. Regarding the issue of contested hearing delays, it may be that courts are not scheduling sufficient time to try contested cases. (See Table Twelve for additional detail.)

Despite the above-survey findings, survey responses to questions about the frequency and length of contested hearing delays may be problematic given that about half of respondents related that hearing delays in contested cases lasted between one week to one month. When asked how often contested hearings were continued for more than twenty-fours after they were started due to insufficient time for completion, 13.5 percent stated that such delays "never" occurred; 42.3 percent noted that they "rarely" occurred (1-10%); 35.6 percent reported that they occurred "sometimes" (11-35%); 6.7 percent indicated that they occurred "often" (36-65%); and the remaining 1.9 percent stated that contested hearing delays occurred "most" of the time (66-95%). No one responded that contested hearing delays occurred "always" (96-100%). Further, when asked the follow up question as to how long contested hearing delays lasted, 5.3 percent indicated that hearings were delayed one day; 16.8 percent noted delays of two to five days; 23.0 percent reported delays of six to ten days; 26.5 percent indicated delays of eleven to thirty days; and 4.4 percent stated delays of over thirty days.

In all sites visited, hearings are scheduled for a date and a time certain.⁶³ Interviews with court personnel, as well as court observation, indicated that the parties and their attorneys generally do not experience any significant delays in having the court preside over their hearings on the date and time scheduled. Wayne County referees, for instance, must comply with an internal procedure that states that hearings should be staggered. For the most part, referees control their own dockets,

⁶³Probate courts' overall compliance with the Resource Guidelines may in part be due to MCR 8.116, "Sessions of Court." As pointed out by the former Wayne County juvenile register, MCR 8.116 (A) provides: "A definite time must be set for all court sessions, and the judge shall promptly open a session. Recesses shall be taken regularly, but should be short, and court must resume on time." In addition, MCR 8.116 (C) states: "A judge shall stagger the docket schedule so that an attorney or party may be heard within a time reasonably close to the scheduled time, and except for good cause shown, the docket shall be called in order." MCR 8.116(B) is also pertinent: "Persons having business with a court must be in court and ready to begin at the opening of the session, and must be otherwise punctual for all court business." As conveyed by the former juvenile register, this rule can serve as a basis for a local or administrative rule. He indicated that although the rule appears outside of statutes governing abuse and neglect proceedings, this factor does not disqualify its use as long as it is not inconsistent with MCR Rule 5.000 et. seq.

scheduling hearings taking into consideration the contested nature or complexity of cases. If cases are fairly routine, generally no more than two cases will be scheduled at one time and may be set at fifteen or one half-hour intervals. If a case is contested, the court has the discretion to allot as much time as necessary to ensure that a trial can be completed expeditiously. As conveyed by the Chief Judge, Chief Referee, and Juvenile Register, the expectation is that the parties and attorneys will be prepared to go forward on the date and time the case is scheduled.

Case Adjournments

RECOMMENDATION 9.

The SCAO should ensure that the judiciary and the bar are aware that case adjournments should be granted in child abuse and neglect cases in only the most exceptional of circumstances.

RECOMMENDATION 10.

In order to diminish adjournments, county practices addressing the identification of and service of process on fathers, especially FIA practices, need to be more closely examined to determine how fathers can be better identified and served early in the court process.

RECOMMENDATION 11.

Policies and practices should be implemented that guarantee that attorneys for the parties (FIA, child, and parent) are appointed before the initial removal and non-removal preliminary hearings.

Commentary:

Individual case file reviews also examined the frequency of adjournments of adjudicatory, dispositional, and parental rights termination hearings and reflected a relatively limited number of adjournments for all types of hearings. (See Tables Thirteen-Fifteen) As to adjournments of adjudicatory hearings, the majority of adjudicatory hearings in Wayne and Jackson Counties were conducted on the first day scheduled. In Wayne County, 68.1 percent of these hearings were held on the first day and in Jackson, 70.3 percent. In Roscommon County, the majority of adjudicatory hearings had no more than one adjournment -- 33.3 percent had no adjournments, 33.3 percent had

one, and 33.3 had two. No adjudicatory hearing in Roscommon and Jackson Counties had more than two adjournments.

In all three sites, the vast majority of cases experienced no adjournments of dispositional hearings. Seventy-nine percent of dispositional hearings were heard the first day scheduled in Wayne County, 77.4 percent were heard the first day scheduled in Jackson County, and 83.3 percent were heard the first day in Roscommon County.

Regarding continuances in parental rights hearings, Jackson County (10 cases) conducted 90 percent of its parental rights trials on the first day scheduled. In Wayne County (32 cases), 37.5 percent of cases were conducted on the first day scheduled; 46.9 percent had one adjournment, 9.4 percent had two and 3.1 percent had three. In Roscommon County, 33.3 percent had zero adjournments, 33.3 percent had two adjournments, and 33.3 percent had two adjournments. The data indicates that further examination of the possible causes of delays in termination proceeding in Wayne and Roscommon Counties probably is warranted.

The following tables set forth the number of continuances for the aforementioned hearings at each one of the sites:

TABLE THIRTEEN

ADJUDICATORY HEARINGS: PERCENTAGE OF CASES WITH ADJOURNMENTS						
	Number of Adjournments					
County	0	1	2	3	4	5 or more
Wayne (Detroit)	68.1%	13.2%	8.8%	1%	1.1%	3.3%
Jackson	70.3%	18.9%	10.8%	0%	0%	0%
Roscommon	33.3%	33.3%	33.3%	0%	0%	0%

TABLE FOURTEEN

DISPOSITIONAL HEARINGS: PERCENTAGE OF CASES WITH ADJOURNMENTS						
	Number of Adjournments					
County	0	1	2	3	4	5 or more
Wayne (Detroit)	79%	16%	1.2%	1.2%	1.2%	1.2%
Jackson	77.4%	12.9%	9.7%	0%	0%	0%
Roscommon	83.3%	16.7%	0%	0%	0%	0%

TABLE FIFTEEN

TERMINATION OF PARENTAL RIGHTS HEARINGS: PERCENTAGE OF CASES WITH ADJOURNMENTS						
	Number of Adjournments					
County	0	1	2	3	4	5 or more
Wayne (Detroit)	37.5%	46.9%	9.4%	3.1%	0%	3.1%
Jackson	90%	10%	0%	0%	0%	0%
Roscommon	33.3%	0%	66.7%	0%	0%	0%

Data on case adjournments is corroborated by case file data on the length of time it takes to the case adjudication and disposition from the date of the first scheduled adjudicatory and dispositional hearings. The data bears out the assertion that at least for adjudicatory and dispositional hearings, the three county courts surveyed are scheduling credible trial dates. Possibly because of the contested nature and complexity of parental rights termination cases, case file data reflects lengthier periods for the completion of such trials. Regarding the high percentage of adjourned TPR hearings in Wayne County, those in charge, if they are not already doing so, need to assess whether adjournments are still occurring with the same frequency as they did in 1993. (See Tables Sixteen-Eighteen)

TABLE SIXTEEN

First Scheduled Adjudicatory Hearing Date to Completion of Adjudication	Number of Cases	Number of Days				
		50th	75th	90th	Min	Max
Wayne (Detroit)	85	0	0	104.2	0	572
Jackson	38	0	1.75	21.6	0	28
Roscommon	7	1	53		0	477

TABLE SEVENTEEN

First Scheduled Dispositional Hearing Date to Completion of Disposition	Number of Cases	Number of Days				
		50th	75th	90th	Min	Max
Wayne (Detroit)	74	0	0	44	0	366
Jackson	38	0	0	7	0	21
Roscommon	5	0	1		0	2

TABLE EIGHTEEN

TPR Hearing Date to TPR Order Date	Number of Cases	Number of Days					State law/rul e
		50th	75th	90th	Min	Max	
Wayne (Detroit)	30	19.5	99.75	244.4	0	434	28
Jackson	12	0	.75	13	0	16	
Roscommon	3				0	0	

Service of Process on Parties

Providing notice to parties of child abuse and neglect proceedings as early as possible can make a substantial difference as to whether cases have to be adjourned in the future. As previously mentioned, the statewide survey results indicated that the failure to identify or locate parents or parents not being available for court hearings caused "some" (11%-35% of cases) delay in litigating cases. Enhancing service of process procedures so that parties are identified and notified of proceedings at the earliest stages of proceedings can diminish adjournments that currently occur.

Case file review in the three counties visited revealed that these jurisdictions may have procedures related to service of process on parents that should be replicated elsewhere. In Jackson County, 89.8 percent of mothers and 75 percent of fathers are served with process prior to the adjudicatory hearing. In Roscommon County, the percentages are even higher with 91.7 percent of mothers being served prior to the adjudicatory hearing and 91.7 of fathers. Even a jurisdiction like Wayne County with a substantially higher volume of cases than the other two counties has relatively good statistics as far as mothers were concerned with 83.7 percent of mothers served prior to adjudication. Service on fathers was more problematic in Wayne County in that 38.4 percent of cases had no identified fathers to serve. This raises the issue of whether fathers are being appropriately identified by the FIA or the court. However, in Wayne County, at least 46.5 percent of fathers identified were served before the adjudicatory hearing. Relatively high rates of identified putative fathers, 51 percent in Detroit and 75 percent in Jackson, also received early notice of court proceedings.

Early Appointment of Counsel

Similar to service of process on parents, the early appointment of counsel also results in diminished adjournments because cases do not have to be rescheduled because parties do not have appointed counsel. At the sites visited and as reflected in the statewide survey, attorneys for children are appointed in almost all cases at the time of the preliminary hearing: 99 percent of cases in Wayne County; 96 percent in Jackson County; and 100 percent in Roscommon County. Attorneys for mothers are appointed slightly less frequently at preliminary hearings: 66.7 percent in Wayne County; 85.1 percent in Jackson County; and 75 percent in Roscommon County. Of all the parties, fathers were the least likely to have attorneys appointed to represent them at the preliminary hearing stage: 28.3 percent in Wayne County; 48.9 percent in Jackson; and 50.0 percent in Roscommon County. In Jackson and Wayne Counties, the most common reasons attorneys were not appointed were that the parent hired his or her own counsel, did not request counsel, or did not appear in court.

Statewide survey results revealed that 93.5 and 83.5 percent of children are represented at preliminary removal hearings and preliminary non-removal hearings, respectively. Custodial parents are represented by attorneys in 59.5 percent of preliminary removal hearings and 51.9 of preliminary non-removal hearings, respectively. The percentages decrease substantially for non-custodial parents who are represented only 30.4 percent of the time at initial removal hearings and 20.7 percent of the time at preliminary non-removal hearings. The percentages increase for both

parents and children as proceedings progress with the great majority of the parties being represented by the time of the parental rights terminations trial -- 97.6 percent of custodial parents, 85 percent of non-custodial parents, and 99.1 percent of children.

Tables Nineteen through Twenty-One provide additional detail on the appointment of attorneys for parents and children at subsequent proceedings in the sites visited.

TABLE NINETEEN

Time Child's Attorney Was Appointed	Number of Cases Sampled	At Preliminary Hearings	At Adjudication	None Appointed
		Percentage of Cases Sampled		
Wayne (Detroit)	99	99%	0%	1%
Jackson	47	96%	2%	2%
Roscommon	12	100%	0%	0%

TABLE TWENTY

Time Mother's Attorney Was Appointed	Number of Cases Sampled	Before Adjudication	After Adjudication	None Appointed	No Mother
		Percentage of Cases Sampled			
Wayne (Detroit)	99	66.7%	11.1%	13.1%	9.1%
Jackson	47	85.1%	2.1%	12.8%	0%
Roscommon	12	75%	0%	25%	0%

TABLE TWENTY-ONE

Time Father's Attorney Was Appointed	Number of Cases Sampled	Before Adjudication	After Adjudication	None Appointed	No Father
		Percentage of Cases Sampled			
Wayne (Detroit)	99	28.3%	15.2%	19.2%	37.4%
Jackson	47	48.9%	8.5%	38.3%	4.3%
Roscommon	12	50%	0%	50%	0%

IX. RECOMMENDATIONS ON CASE FLOW MANAGEMENT: CASE TRACKING
RECOMMENDATION 12.

The SCAO should develop a consistent method of file management, including an automated record system, for use by county courts.

RECOMMENDATION 13.

The SCAO should work closely with each county court to evaluate whether each court is utilizing its existing computer technology as effectively as possible for the tracking of cases.

RECOMMENDATION 14.

SCAO policy should be implemented to require that each county court produce a uniform quarterly report for submission to the SCAO, the bar and public detailing case tracking information.

RECOMMENDATION 15.

Sufficient funding should be appropriated for the purchase and installment of computer software and equipment necessary to upgrade or make uniform existing county case tracking systems.

RECOMMENDATION 16.

The SCAO should train judges, local administrators, and other appropriate court personnel on the implementation of an automated tracking system to ensure that a high level of expertise in data management is maintained. Tracking systems should be utilized so that appropriate court personnel or a permanency planning committee are designated to monitor caseflow.

Commentary:

Another component to timely case processing is the implementation of information systems that can assist court administrators in monitoring whether judicial staff are in compliance with statutory and other mandates for timely decision making in child abuse and neglect cases. The Resource Guidelines support the use of tickler systems, the employment of court staff to contact

parties to remind them of deadlines for report filing, and "computerized data system[s] capable of spotting cases that have been seriously delayed, and capable of measuring court progress in case flow management."⁶⁴

Although the statewide survey did not inquire specifically as to computerized or manual monitoring systems, the site visits did provide some insight into how at least three county probate court systems track cases. In Wayne County, the Juvenile Division has a Information Services Department that is able to provide information to court administrators on the numbers and types of cases assigned to each judicial officer, each judicial officer's percentage of pre-dispositional original neglect petitions pending a hearing beyond 100 days, open cases and their status, the number of cases involving children in and out of state custody, and the cases in which parental rights have been terminated with the date of termination. The Chief Referee reported that she regularly reviews case tracking information which enables her to work with individual referees on case processing and caseload concerns⁶⁵.

In addition, with the support of the Chief Probate Court Judge and Juvenile Register, plans are currently underway to establish a "Case Flow Management Committee" to conduct individual reviews of cases so that permanency planning concerns can be addressed and monitored. Individuals on the committee will be those involved with the case in the child abuse and neglect process, such as representatives of the FIA, Attorney General's Office, the Legal Aid and Defender Association, and the private bar. A "case flow" manual is being drafted to guide the committee's work, as well as that of judges, referees and other court personnel.

Wayne County court personnel did not perceive automated support as being at the desired level. They believed that there were insufficient funds for the purchase of programming software and new equipment. Additionally, the Juvenile Division's main frame computer (AS400) may at any time be shared with as many as six other non-juvenile court agencies. Also, staff felt that court personnel needed training on technology. Some staff are more receptive to computer technology

⁶⁴National Council of Juvenile and Family Court Judges, *The Resource Guidelines*, 20.

⁶⁵As of late 1996, the Wayne County Juvenile Division had experienced personnel changes. The Chief Referee interviewed during site visits is now the Juvenile Register, in charge of the overall administration of the Juvenile Division. Another referee has been designated as Chief Referee. The Juvenile Register reports that she reviews probate judge statistics related to timeliness of court hearings, whereas as the Chief Referee reviews referee statistics.

training than others. Some court workers are very concerned that their jobs will be terminated by enhanced computer technology which may eliminate certain clerical tasks now performed manually.

In Roscommon County, court personnel related they did not use a computerized tracking system to measure compliance with court hearing mandates. Given the low number of abuse and neglect cases handled annually (estimated number is 35), staff indicated that they were able to monitor the timeliness of case processing manually.

As stated earlier, Kent County Probate Court has implemented an effective system for case tracking. Its “permanency planning department” monitors how child abuse and neglect cases are flowing through the system. At least as of 1992, when the Kent County study was conducted, the department’s supervisor maintained a handwritten log of hearing information on cases with the aim of identifying those cases out of compliance with statutory mandates for the scheduling and completion of hearings. Upon discovering problem cases, he would contact the FIA or the attorneys for the parties in an attempt to resolve delays.⁶⁶ The permanency planning department has been viewed as “achiev[ing] workable, predictable, and efficient procedures within the court...[and] develop[ing], with community children’s agencies, a variety of structured mechanisms to coordinate case planning and permanency planning within court parameters....”⁶⁷

⁶⁶Hardin, Rubin, & Baker, *A Second Court That Works*, 63.

⁶⁷*Ibid*, 2.

TABLE TWELVE**Factors Affecting Court Continuance/Adjournments and Other Delays**

	Valid Cases N	<u>Frequency of Occurrence</u>					
		Never (0%)	Rarely (10%)	Some (11-35%)	Often (36-65%)	Most (66-95)	Always (96-100%)
Factors Affecting Court Delays:							
				Percentage			
Failure to identify or locate parents	110	4.5	36.4	46.4	10.0	1.8	0.9
Service of process on parents delayed	107	4.7	47.7	41.1	5.6	0.0	0.9
Lack of service on tribe in cases w/Native American children	102	27.5	62.7	9.8	0.0	0.0	0.0
Appointment of attorneys for parents delayed	110	19.1	49.1	20.9	6.4	4.5	0.0
Appointment of attorneys for child delayed	110	55.5	40.0	2.7	1.8	0.0	0.0
Assignment of DSS caseworker delayed	110	55.5	40.9	2.7	0.9	0.0	0.0
DSS caseworker turnover	110	42.7	34.5	18.2	4.5	0.0	0.0
Prosecuting Attorney for “people” not available	109	26.6	47.7	22.9	1.8	0.9	0.0
Caseworker not available	110	20.9	50.9	26.4	1.8	0.0	0.0
Attorney for parents not available	110	10.9	50.0	32.7	4.5	1.8	0.0
Attorney for child not available	110	18.2	49.1	29.1	2.7	0.9	0.0
Judge/Referee not available	110	35.5	51.8	11.8	0.9	0.0	0.0
Prosecuting attorney for “people” not prepared	109	36.7	53.2	10.1	0.0	0.0	0.0
Caseworker not prepared	109	29.4	55.0	15.6	0.0	0.0	0.0
Attorney for child not prepared	109	34.9	58.7	6.4	0.0	0.0	0.0
Attorney for parent not prepared	109	24.8	59.6	13.8	0.9	0.9	0.0

Table Twelve (Cont'd.)

Factors Affecting Court Continuance/Adjournments and Other Delays

		<u>Frequency of Occurrence</u>					
	Valid Cases N	Never (0%)	Rarely (10%)	Some (11-35%)	Often (36-65%)	Most (66-95)	Always (96-100%)
Factors Affecting Court Delays:							
Parents not available	109	4.6	40.4	46.8	6.4	1.8	0.0
Child not available	108	36.1	52.8	10.2	0.9	0.0	0.0
Witness not available	107	4.7	46.7	44.9	2.8	0.9	0.0
Failure to timely file or serve report	106	12.3	60.4	24.5	2.8	0.0	0.0
Failure to timely serve notice of process	107	7.5	69.2	20.6	2.8	0.0	0.0
Inadequate court time to hear case	109	24.8	44.0	27.5	1.8	1.8	0.0
Judicial determination needed in related domestic relations case	103	31.1	49.5	18.4	0.0	1.0	0.0
Judicial determination needed in related criminal case	105	17.1	57.1	23.8	1.0	1.0	0.0
Judicial determination needed in related paternity case	105	33.3	47.6	17.1	0.0	1.9	0.0

X. RECOMMENDATIONS ON ACCESS TO COMPETENT LEGAL REPRESENTATION

Representation for Children, Parents, and the FIA

RECOMMENDATION 17.

All courts presiding over child abuse and neglect cases should implement procedures that guarantee that each child and parent are appointed trained and skilled attorneys in advance of initial preliminary hearings and who will continue representation to each child and parent until a plan of permanency is implemented (e.g., adoption, reunification, permanent custodial placement). Attorneys for children and parents should be recruited and selected in part for their skill and knowledge in law and fields relevant to child welfare.

RECOMMENDATION 18.

The Michigan Bar and the SCAO should work with courts to develop models for use when courts contract with attorneys to provide legal services to parents and children in abuse and neglect cases. The contracts should incorporate provisions addressing the attorney's obligations to the client and standards for reasonable attorney caseloads taking into consideration the need for out-of-court case preparation time.⁶⁸

⁶⁸In accordance with a grant from the federal State Justice Institute, the ABA Center on Children and the Law is currently drafting a manual "Improving Court System Utilization of Appointed Lawyers For Children and Attorney-Guardian Ad Litem" for use by the judiciary. It will include model contracts, orders and other information pertinent to the court's oversight of attorney representation of children.

RECOMMENDATION 19.

Recommendation 47 of the Binsfeld's Children's Commission should be implemented. This recommendation provides: "Juvenile Courts in each county shall be assigned specialized, highly trained, permanent prosecutors/attorneys general to represent FIA at all stages of abuse and neglect cases, beginning with the filing of the petition to remove the children from the home. The Family Independence Agency will expand the pilot project that is providing funds

to prosecutors to increase their ability to represent the FIA except where a conflict of interest arises."⁶⁹

RECOMMENDATION 20.

The FIA or its agent should be represented by reliable civil counsel at all stages of child abuse and neglect proceedings. Michigan's statute and court rule addressing attorney services for the FIA or its agent refers to a prosecuting attorney serving as a "legal consultant" to the FIA. MCL 712A.17(5), MCR 5.914(B)(1). In order to ensure that the FIA is assured of adequate representation in child abuse and neglect proceedings, the above-cited statute and court rule should be modified to clarify that the prosecuting attorney or assistant attorney general is to act as the FIA or its agent's "attorney" in child abuse and neglect proceedings.

RECOMMENDATION 21.

The practice in some counties in which FIA workers are responsible for drafting the initial abuse and neglect petition should be modified to delegate this responsibility to the FIA attorney.

⁶⁹Binsfeld Children's Commission, *In Our Hands*, 108.

Recommendations of Michigan Children's Ombudsman

RECOMMENDATION 22.

The recommendation by the Michigan Children's Ombudsman that MCL 712A.17c(7), the statutory provision addressing the case preparation obligations of the child's attorney, should not only be "better enforced," but "should also be amended to specifically require that the child(ren)'s attorney meet with the child(ren), at least once before each proceeding or hearing" should be adopted.⁷⁰

RECOMMENDATION 23.

Public Act 204 that "requires the Ombudsman to investigate and report alleged infractions about attorneys who engage in adoption" should be amended to "...require the Ombudsman to report violations of MCL 712A.17c(7) to the Attorney Grievance Commission."⁷¹

Training of Attorneys for the Parties and Dissemination of State Bar of Michigan Children's Task Force Guidelines For Advocates For Children in Michigan Courts

RECOMMENDATION 24.

Prior to appointment, all attorneys who represent the FIA, children, and parents in abuse and neglect cases should be required to undergo mandatory training on topics relevant to advocacy in the juvenile or family court forum and provide information to the court on their experience level.

⁷⁰Richard S. Bearup, Ombudsman, *Children's Ombudsman Annual Report 1995-1996*, 56.

⁷¹Regarding an amendment to PA 204, the Ombudsman makes an observation, but not a specific recommendation on this point. Ibid, 56.

RECOMMENDATION 25.

The recommendations as outlined in the Final Report of the State Bar of Michigan Children's Task Force (September 21, 1995) should be implemented, including that:

The State Bar of Michigan adopt [the Final Report's] Guidelines for Advocates for Children and distribute them to bench, bar and other interested persons throughout Michigan;

The Guidelines for Advocates for Children be implemented by the organized bar, courts, and individual attorneys representing children in Michigan courts for the improvement of such representation; and

Law schools, Michigan Judicial Institute, Institute for Continuing Legal Education, other lawyer training units, and the Michigan CASA Association use [the] Guidelines for Advocates for Children as a basis for training attorneys and others to advocate for children.⁷²

RECOMMENDATION 26.

The court, attorneys for children, and the organized bar should consider establishing mentorship programs in which more experienced attorneys provide guidance to less experienced attorneys on child advocacy practice.

⁷²Ibid, *Final Report*, 85.

RECOMMENDATION 27.

Recommendation 50 of the Binsfeld Commission Report should be adopted and expanded upon. The Recommendation states: "[The] FIA should work with Prosecuting Attorneys Association of Michigan (PAAM) to ensure Michigan's public and private law schools have child welfare/protection/juvenile law curricula."⁷³ Added to it should be the statement that other Michigan child and parent legal advocacy groups should also participate in curricula development to ensure that subjects relevant to the representation of parents and children are covered.⁷⁴

Commentary:

Training subjects to be covered would include: legal and procedural aspects of child abuse and neglect actions, both federal and state requirements; permanency planning considerations; attorney counseling and trial skills; the role of counsel for children; requirements of the Indian Child Welfare Act (ICWA); child development; special ethnic and cultural issues; special education; provision of services to children diagnosed with mental, developmental, or physical disabilities; drug abuse and its impact on parenting and treatment options; and community and other resources available to children and families at risk for or in crisis. Consideration should be given to the development of training videotapes and written materials for use by jurisdictions in less populated areas.

Attorneys for children must also be knowledgeable of Michigan's statutory requirements for children's attorneys, the State Bar of Michigan Children's Task Force's "Guidelines For Advocates For Children in Michigan Courts,"⁷⁵ and the American Bar Association's "Standards of Practice For Lawyers Who Represent Children in Abuse and Neglect Cases," approved by the American Bar Association's House of Delegates on February 5, 1996.

⁷³Binsfeld Children's Commission, *In Our Hands*, 109.

⁷⁴Founded in 1976, and the oldest clinical law program of its type in the nation, the University of Michigan Law School's Child Advocacy Law Clinic has particular expertise in developing child welfare\protection\juvenile law curricula. The Clinic has enabled law students to specialize in representing parties in child protection and foster care cases.

⁷⁵State Bar of Michigan Children's Task Force, *Final Report*, 85-120.

The Resource Guidelines view access to competent legal representation for all parties (e.g., FIA, children and parents) to juvenile court proceedings to be essential to the effective functioning of juvenile and family courts.⁷⁶ Highly skilled and diligent attorneys are instrumental in ensuring that judges and referees have the evidence, documentary and testimonial, that they need to make well-considered judgments about the lives of children and their families.⁷⁷ Under codes of professional conduct, statutory mandates, and national,⁷⁸ Michigan⁷⁹ and other professional standards, attorneys have the responsibility to be knowledgeable in the laws that they practice, must represent the interests of their clients zealously, maintain appropriate contact with their clients to consult about their cases, and adequately investigate and prepare cases for litigation.

The Resource Guidelines expressly state that courts can have an influential role in guaranteeing that parties are represented by competent counsel. According to the Guidelines, courts should do the following:

- establish prerequisites for the appointment of attorneys to cases, including mandatory training and experience requirements;
- implement standards governing how parties will be represented, including requiring representation by the attorney throughout the life of a case;
- impose sanctions for violating standards of representation, including terminating an attorney's appointment as counsel, denying further appointments, levying fines, or referring the attorney to the appropriate bar office dealing with attorney professional conduct;

⁷⁶National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 22.

⁷⁷*Ibid.*

⁷⁸Approved by the American Bar Association House of Delegates on February 5, 1996, "Standards of Practice For Lawyers Who Represent Children in Abuse and Neglect Cases," mirrors many of the Resource Guidelines on the court's role in ensuring that children have access to competent counsel. Part II of the Standards addresses such topics as: assuring independence of the child's attorney; establishing uniform representation rules; enhancing lawyer relationships with other court connected personnel; timing of attorney appointment; lawyer eligibility for and method of appointment; lawyer compensation; immediate provision of access; permitting child to retain a lawyer; court's role in lawyer training; provision of mentorship opportunities; record access by lawyers; and role in assuring reasonable caseloads for attorneys.

⁷⁹Similarly, the State Bar of Michigan Children's Task Force in its *Final Report* dated September 21, 1995 presents "Guidelines For Advocates For Children In Michigan Courts." The Guidelines cover many of the topics addressed in the ABA standards discussed above, including the qualifications of attorneys appointed as a child's legal counsel or GAL, training requirements, and the role definition and duties of the child advocate who is GAL, legal counsel, CASA, or special advisor. The Michigan Guidelines differ from the ABA standards in that they allow a single attorney to appear for the child in the role of advocating the child's best interest, unless the child is older and the attorney view of best interests differs from that of the child. *Ibid.*, 96-97.

- ensure that attorneys are reasonably compensated for work performed on cases and have reasonable caseloads; and
- be actively involved in the training of attorneys and other juvenile court participants.⁸⁰

As stated earlier, the Binsfeld Children's Commission requested that the SCAO, along with the FIA, examine how quarterly review hearings could be conducted to make them more effective.⁸¹ Binsfeld Children's Commission, *In Our Hands* (Lansing, Michigan: July 1996), Recommendation #60. For the reasons presented above, the issue of quality representation for parties is a primary factor in enhancing the effectiveness of those quarterly reviews, as well as earlier proceedings. Proficient legal advocacy can increase the probability that permanency planning issues are priorities for the court's consideration.⁸²

Michigan's Compliance with Resource Guidelines

Michigan probate courts are consistently appointing attorneys for children and custodial parents in the majority of cases in a timely manner. The statewide survey and site visit findings on the appointment of counsel outlined earlier support this proposition. However, it is problematic that statewide survey results did not reveal that children were appointed counsel in 100% of cases at all stages of proceedings. Michigan's statutes and court rules require that an attorney be appointed to represent a child who is the subject of an abuse and neglect petition at all stages of the proceedings

⁸⁰Ibid.

⁸¹Binsfeld Children's Commission, *In Our Hands*, 44.

⁸²The commentary to "Guidelines For Advocates For Children In Michigan Courts" discusses the fiscal implications of appointing advocates for children in abuse and neglect proceedings. It states:

Research by Duquette and Ramsey, *Representation of Children*, indicates that fiscal advantages directly related to certain institutional economies may ensue with the appointment of advocates for children in these cases. According to the study, there is an increased diversion of cases where the child has an advocate and that advocate is well trained. Cases were more efficiently processed, resulting in fewer hearings over a shorter period of time. Therefore, any increase in the cost of legal services to children may result in a "bubble effect," a temporary increase during transition which gradually contracts. Beyond the contracting "transition bubble," the Duquette/Ramsey study projects that these institutional economies could yield a more cost efficient legal process than the current legal process.

Ibid, 88.

from the time of the initial preliminary hearing through any termination of parental rights hearings and post-termination reviews.⁸³ Table Twenty-Two summarizes the statewide survey findings:

TABLE TWENTY-TWO

REPRESENTATION OF PARENTS AND CHILDREN BY ATTORNEYS IN CHILD ABUSE AND NEGLECT CASES			
	Custodial Parents	Non-Custodial Parents	Children
Type of Hearing	Percentage Represented by Attorney		
Preliminary Non-Removal Hearing	51.9	20.7	83.5
Preliminary Removal Hearing	59.5	30.4	93.5
Adjudicatory Hearing	90.8	57.8	97.8
Review	86.5	55.1	96.3
TPR Hearing	97.6	85.0	99.1

Likewise, the percentage of parents, both custodial and non-custodial, represented by counsel may be lower than it ought to be. Legal representation for parents is as equally important to timely case resolution as legal advocacy for children. Attorneys representing parents can advocate for services for parents that may result in earlier reunification and in certain cases, provide parents with the legal advice necessary to make considered judgments about termination of parental rights and adoption. Even the appointment of counsel for absent or unknown parents, as is the practice in Jackson County, may benefit a case. This attorney would be expected to perform a search for the missing parents in addition to any search performed by the FIA.

Even though attorneys are being appointed to represent children in the great majority of children's cases, it is important to evaluate the quality of their performance as attorneys for children. Are they satisfying Michigan's statutory obligations required of attorneys for children,⁸⁴ as well as

⁸³MCL 722.630, MCL 712A.17c(7), MCR 5.915(B)(2) and MCR 5.965(B)(2) cited in Duquette, *Michigan Child Welfare Law*, 104.

⁸⁴Michigan statutes specify in part the responsibilities of the child's attorney. In addition to providing for the mandatory appointment of an attorney to represent the child, the child protection law [MCL 722.630] provides that "the attorney shall make further investigation as he deems necessary to ascertain the facts, interview witnesses, examine witnesses in both the adjudicatory and dispositional hearings, make recommendations to the court, and participate in the proceedings to competently represent the child." Additionally, MCL 712A.17c(7) requires the appointment of an attorney to represent the child and that

other professional and national standards of conduct? Of all aspects of Michigan's handling of abuse and neglect cases, including the need for parents to have access to competent counsel, the quality of representation for children may be the most worrisome.⁸⁵

The statewide survey revealed that in a significant percentage of counties, attorneys did not have to meet any quality control requirements (e.g., certain level of experience or training) prior to their appointment as counsel for children and parents. Regarding the use of quality controls prior to the appointment of attorneys for children, only 37.8 percent of judges and 57.1 percent of referees in small jurisdictions reported that attorneys had to meet quality control requirements; and in larger jurisdictions, only 63.6 percent of judges and 42.1 percent of referees reported their use. As to appointment of attorneys for parents, quality control requirements were required to be met in even fewer jurisdictions. In smaller jurisdictions, 40.0 percent of judges and 45.5 percent of referees reported their use; and in larger jurisdictions, 63.6 percent of judges and 42.1 percent of referees indicated attorneys must meet quality control requirements.

Though anecdotal, site visits, including court observation, also provide insight on the adequacy of representation for children and parents, as well as the FIA. The following are brief summaries of site visit findings on the issue of representation of parents, children, and the FIA.

"[t]he appointed attorney shall observe and, dependent upon the child's age and capacity, interview the child. If the child is placed in foster care, the attorney shall, before representing the child in each subsequent proceeding or hearing, review the agency case file and consult with the foster parents and caseworker."

⁸⁵This assessment's findings are supported by those of the Michigan Children's Ombudsman's Office. The Ombudsman's 1995-1996 annual report indicated that "[t]he Ombudsman found in 29 of 61 applicable cases, or 47.5%, there was a failure of the child's attorney to comply with the legal requirement that they meet and/or consult with their client." He added that "[d]espite statutory requirements, many child attorneys fail to contact foster parents, review agency files or see a child before hearings." As such, "this affects the quality and outcome of the child's legal representation, creates court delays and contributes to the children's lack of permanency." He "recommend[ed] that court-appointed attorneys should be held more accountable to current legal and professional standards of representation in child welfare proceedings." Bearup, *Children's Ombudsman Annual Report 1995-1996*, 56.

Wayne County

Parents and Children

Almost all those interviewed commented how the quality of representation for children and families varied dramatically. Representation of children provided by the Legal Aid and Defender Association of Detroit was generally described as being "very good." It was reported that the Association is appointed to represent children in approximately twenty-five percent of Wayne County's abuse and neglect cases. Private attorneys are appointed to represent children and parents in the majority of cases. Though there were exceptions, overall their representation was viewed as problematic.

Several judicial officers related that attorneys for children do not consistently have contact with their clients both before and after hearings. One referee estimated that as few as ten percent of children's attorneys saw their clients, despite the aforecited statutory requirement.

Judicial observations were confirmed during project staff court observation. One project staff member reported that after observing approximately ten hearings, including several preliminary removal hearings, the only time in which a child's position was presented to the court was in a case in which a Legal Aid and Defender Association attorney represented the child. In almost all cases observed by this staff member, and in particular during preliminary hearings, children's attorneys did not voice their clients' interests to the court, appeared not to have spoken to their clients, did not present independent evidence to the court of their clients' interests, and did not provide the court with evidence, testimonial or documentary, of issues relevant to their clients' concerns (e.g., visitation with parents and siblings, provision of educational, health, mental health and other services).

In Wayne County, as well as in the other two sites, children's lack of contact with their attorneys may be exacerbated by the fact that the children, even older ones, are not regularly brought to court by the FIA or their legal custodians to participate in their cases and/or consult with their attorneys,⁸⁶ This is generally the case even for preliminary hearings, and may be due to attorneys' lack of clarity as to their role as child's counsel.

Those interviewed did not voice as much concern over the quality of representation for parents. Project staff court observed more vigorous advocacy on behalf of parents than of children.

⁸⁶Individuals interviewed had varying opinions about whether children should actively participate in legal proceedings.

Attorneys for parents seemed to be better prepared, willing to cross-examine FIA witnesses, and more likely to present their clients' positions to the court.

The Wayne County Probate Court recognizes that legal advocacy for parties, in particular children, needs improvement. As such, attorney training in the handling of both abuse and neglect and delinquency cases is now mandatory. At the time of site visits, two half-day mandatory training sessions were scheduled to address issues relevant to child advocacy. It will be a condition for future appointment of cases that attorneys attend training. They must also fill out a court-produced attorney profile sheet which inquires about the attorney's experience in the handling of probate and juvenile cases.

All courts handling child abuse and neglect cases should recognize their role in ensuring quality representation for the parties coming before the court by doing the following:

- implementing attorney quality control measures, such as mandatory training and experience requirements;
- advocating for reasonable compensation for attorneys;
- educating attorneys on juvenile court practice;
- ensuring attorney caseloads are reasonable;
- appointing attorneys for parties at the preliminary hearing with that representation continuing throughout the life of a case; and
- monitoring attorney conduct.

The FIA

In Wayne County, the Family Independence Agency (FIA), petitioner, is represented in abuse and neglect proceedings by the Office of the Attorney General (OAG).⁸⁷ Initially, the FIA had been represented by the prosecuting agency responsible for handling criminal cases. The FIA became dissatisfied with this agency's representation as case workers found their attorneys not representing their positions on cases to the court.

⁸⁷In addition to the FIA, OAG staff represented that they also represent the private non-profit agencies that enter into contract with the FIA to provide foster care services. If a conflict occurs between the FIA and private agencies, internal protocol exists for its resolution. It was unclear to project staff whether in fact an attorney-client relationship is actually established between the OAG and private nonprofit agencies.

The OAG's Children and Youth Services Division, responsible for providing FIA representation, is currently headed by an Assistant Attorney General in Charge who has full-time administrative and supervisory responsibilities. The Division is comprised of fifteen full time attorneys who advocate for the FIA in all child abuse and neglect cases, including parental rights termination and appellate cases.

The Assistant Attorney General in Charge perceived his staff as working a "great deal" of overtime. According to him, the attorneys are working an average of 50 to 60 hours per week and may be appointed to represent the FIA in as many as 7,000 cases, meaning an estimated individual caseload of 460 cases per attorney. As they are in court five days per week, they do not have much office time to prepare for cases.

In addition to the juvenile court trial work, the OAG's Children and Youth Services Division, provides representation to the FIA in appeals. Appeals require attorneys to review voluminous records of trial proceedings, research legal issues, and produce briefs consisting of well-framed legal arguments. In 1995, the Division handled as many as 121 appeals, many of which involved appeals by parents of adverse termination of parental rights decisions.

Roscommon County

Parents and Children

Three attorneys have contracted with the Probate Court to represent children and parents in abuse and neglect cases, as well as children and youth in delinquency proceedings. As reported in the statewide survey and by those interviewed, all children are represented by attorneys at all stages of abuse and neglect proceedings and most custodial parents.⁸⁸ There are no mandated experience, training and quality control requirements that must be met before attorneys are appointed to represent children or parents.

For the most part, contract attorneys estimate that abuse and neglect cases are only about ten percent of their practice. They are general practitioners who also handle delinquencies, criminal matters, and real estate concerns. Most of their training on child welfare issues has been "on-the-job."

⁸⁸The statewide survey indicated that 90 to 99 percent of indigent custodial parents are represented by attorneys in child abuse and neglect cases and 100 percent are represented in parental rights termination trials. The percentages diminish for indigent non-custodial parents, with the exception of parental rights termination proceedings in which 100 percent are represented.

As in other Michigan jurisdictions, children are not usually active participants in child abuse and neglect proceedings or present in court to consult with their attorneys. It appeared to be the general feeling among the court and legal practitioners that a child's attendance at court should be handled carefully. If a child is brought to court, he or she will usually remain outside the courtroom or on occasion be interviewed by the judge in his chambers.

The judge did indicate that if he perceived a child as being "sold out" by the attorney representing the child, he would terminate the attorney's involvement in the case. It would be unlikely that he would assign cases to such an attorney in the future.

The FIA

The FIA is represented by an attorney employed full-time by the local prosecutor's office. In addition to representing the agency in abuse and neglect cases, he provides advocacy services in juvenile delinquency and adult criminal matters. The number of abuse and neglect cases he handles is minimal in contrast to other types of cases. It should be noted that FIA workers write their own abuse and neglect petitions for submission to the court.

This prosecutor was not available to be interviewed during the site visit. It was evident that he was involved in a relatively high number of cases being tried in different courtrooms. Though it may be premature to make the point without having spoken with this individual, the FIA may want to examine whether this individual is able to give abuse and neglect cases adequate attention, in light of his demanding schedule. Additional prosecutors may have to be hired to alleviate his burden. Moreover, his schedule may ultimately conflict with the juvenile court's resulting in an increased number of adjournments. This occurred in the one abuse and neglect case observed by project staff. A complex abuse case had to be rescheduled because the FIA's attorney had to be in another courtroom.

Jackson County

Parents and Children

Similar to Roscommon County, the court has two private attorneys on contract to represent parents and children in child protective cases. Both represent parents and children, receiving alternating assignments. The probate court judge selects the attorneys to be offered contracts. Both of the current contract attorneys have had contracts for a number of years. The contract is renewed

each year and has not been offered to other counsel. However, other attorneys have not requested contracts and those interviewed did not believe that any other local counsel are interested in becoming the primary assignment counsel in child protective actions.

In addition to the contract counsel, the court maintains a list of four additional private attorneys who are assigned conflict cases. None of the contract or conflict attorneys practice exclusively in the juvenile court, although their juvenile assignments represent a substantial portion of the contract attorneys' workloads. Contract and conflict counsel are all highly experienced lawyers with substantial experience in the juvenile court practices.

The FIA

The FIA is represented by an assistant prosecuting attorney. A full time juvenile assignment was created in the prosecutor's office in 1995 and a prosecutor is now assigned exclusively to handle the county's juvenile caseloads. All those interviewed commented that assigning one prosecuting attorney to juvenile matters has had a positive effect on case progress. The prosecutor is more familiar with the caseload, and has more time to review and comment on filings, as well as meet with caseworkers and other parties. Full time assignment of one prosecuting attorney to the juvenile court has ensured availability for hearings and has helped reduce scheduling conflicts. The current prosecutor anticipated a transfer to another assignment in August 1996. However, she expected to be replaced with another assistant prosecutor who has had some experience in juvenile matters.

Reasonable Compensation for Attorneys Representing Parents and Children

RECOMMENDATION 28.

Attorneys representing children and parents should receive compensation that is reasonable and commensurate with the amount and complexity of work involved in child abuse and neglect cases.

RECOMMENDATION 29.

Compensation systems should not be utilized that provide disincentives to fulfilling responsibilities mandated by statutes, codes of professional responsibility and other standards (e.g., annual, "no case cap" contracts).

Commentary:

Payment for services often has a direct impact on the quality of representation provided to parties. It is essential that attorney compensation be reasonable and commensurate with the amount and complexity of work involved in these cases. At the same time, attorneys need to be held accountable for performance. As the earlier discussion of attorney representation reflected, many attorneys for children may not be meeting with their clients or advocating vigorously for their interests. If their payment for services is diminished or not reasonable, there may be even less of an incentive to provide quality legal advocacy.

As stated in the Guidelines, reasonable compensation for attorneys is necessary if attorneys are to be effective in doing their jobs. Compensation systems should not be utilized that provide disincentives to fulfilling responsibilities mandated by statutes, codes of professional responsibility and other standards.⁸⁹ Michigan appears to have varied systems for compensation of attorneys. In some jurisdictions, a specific number of attorneys have contracts with the court to provide representation in a certain number of cases for a set annual fee. In others, private attorneys are appointed and paid on a per case basis, or an organization, such as the local legal services program, contracts with the court to handle a substantial number of cases (e.g., 25% as in Wayne County.)

Consideration might also be given to the issue of attorneys' payment for services coming out of court funds. The question is posed as to whether there is an inherent conflict of interest in that the court itself might have an incentive to save money and thus unintentionally not encourage more zealous advocacy that might be more costly.

The Establishment of CASA Programs

RECOMMENDATION 30.

Funding should be provided for the establishment of Court Appointed Special Advocate (CASA) programs in all counties in the state.

⁸⁹One significant problem with annual, "no case cap" contracts is that there is no incentive to perform extra work on cases or even work that is ethically or statutorily mandated (e.g., seeing the child client).

RECOMMENDATION 31.

New programs should work closely with already existing CASA programs in the state to establish policy and procedure related to the recruitment, training, screening and monitoring of CASA volunteers.

Commentary:

According to Michigan Court Rule [MCR 5.916], a CASA may be appointed as a guardian ad litem for a child, in addition to the appointment of an attorney for the child.⁹⁰ A CASA is a "trained and supervised lay volunteer"⁹¹ who advocates in court for the child's best interest. The statewide survey indicated that in smaller jurisdictions, 4.6 percent of judges and 9.1 percent of referees appointed CASAs "sometimes or more often" (>10% of cases) and in larger jurisdictions, 23.8 percent of judges and 27.8 percent of referees appointed CASAs "sometimes or more often." These results are likely as more CASA programs exist in larger jurisdictions.⁹²

Of the three sites visited,⁹³ only Wayne County was in the process of establishing a CASA program. Project staff met with the Executive Director of Wayne County's Court Appointed Special Advocates (CASA) organization. The program received a two-year grant from the National CASA Association, and an advisory team started meeting in May 1996 to address issues of volunteer recruitment, screening, training, and supervision. The advisory board consists of four subcommittees (Policies and Procedures, Court and Legal Issues, Resource Development, and Program Administration). The agency's organizing committee includes a probate judge, three referees, a representative from the OAG, and the president of a local foundation.

Michigan has no legislation to guide CASA implementation. However, Wayne County program staff have relied heavily on the State CASA Association and other local CASA

⁹⁰Duquette, *Michigan Child Welfare Law*, 62.

⁹¹Ibid.

⁹²In Roscommon County, a rural community, several individuals made the comment that volunteer recruitment is difficult as individuals are struggling to make a living in their community and raise their families. Being a CASA is perceived as requiring a commitment of significant time.

⁹³Kent County has an established CASA program. As of 1992, the program served 73 children in child abuse and neglect cases out of a total of 1,022 and was comprised of twenty-eight trained volunteers. Priority for CASA appointments include cases involving parental drug use, severe abuse and neglect, and large sibling groups requiring extra attention. CASA volunteers generally work with the child's attorney. Hardin, Rubin, & Baker, *A Second Court That Works*, 106.

organizations in developing their program. In addition, the National CASA organization has assisted with developing handbooks, training curriculum, and materials.

Initial plans include having two to three referees making CASA assignments. The goal for the first year of the program is to have twenty CASA volunteers trained and assigned to cases. Currently, the agency has about 100 potential volunteer applicants. They have been contacted and will be recruited for training to start in early 1997. Screening procedures for CASA volunteers will include a criminal background check conducted through the police department, plus a driving record review. Wayne County CASA is also working with the FIA to conduct child abuse checks by using the central registry.

A CASA could be particularly helpful in monitoring the provision of services to children and the implementation of permanency plans. A model of representation that should be evaluated is the appointment of both a CASA and an attorney to a case.⁹⁴

⁹⁴The FIA is currently evaluating models of attorney, GAL, and CASA representation in two Michigan counties to assess whether models of representation affect case outcome. The findings from this study should be useful in determining the appropriateness and effectiveness of various models of representation for children.

XI. RECOMMENDATIONS ON ENHANCING HEARING QUALITY AND TIMELY IMPLEMENTATION OF PERMANENCY PLANS

Judicial and Attorney Caseloads

RECOMMENDATION 32.

In order for hearings to be effective, the SCAO should develop caseload standards for the judiciary modeled after the formula developed in the Kent County study.⁹⁵

RECOMMENDATION 33.

The judiciary's staffing resources should be carefully evaluated as a unified family court is established in Michigan.

RECOMMENDATION 34.

The impact on caseload of recent changes in delinquency laws needs to be examined.

Commentary:

Of particular interest to the Michigan court system, FIA, and advocacy community is the recommendation of the Binsfeld's Children Commission which requested that the SCAO, along with the FIA, examine how quarterly review hearings could be conducted to make them more effective.⁹⁶ Binsfeld Children's Commission, *In Our Hands* (Lansing, Michigan: July 1996), 111. Much of this report's discussion of court calendaring, case flow management, access to competent legal representation, and adequacy of court facilities all bear on the quality of all types of hearings, including further dispositional and permanency planning hearings. For example, proficient legal advocacy can increase the probability that permanency planning issues are priorities for the court's consideration. However, several other factors also influence the effectiveness of hearings, such as: reasonableness of caseloads for judges and attorneys, the length of time allotted for each court review, submission of thorough social worker and other pertinent reports to the court in a timely manner, ensuring the presence of parties, attorneys, social workers, witnesses, and other pertinent people at hearings, the availability of appropriate services, and the recommendations of FCRBs.

⁹⁵Hardin, Rubin, & Baker, *A Second Court That Works*, 27-28.

⁹⁶Binsfeld Children's Commission, *In Our Hands*, 44.

The SCAO should work closely with courts handling abuse and neglect cases to ensure that judiciary's caseloads are reasonable and commensurate with the complexity of child abuse and neglect cases. If judges and referees are to be in compliance with the Resource Guidelines, they must have sufficient time off the bench to prepare for cases, ample time allotted while on the bench to actually hear cases, and adequate time for administrative responsibilities, opinion issuance, and professional and community activities. Appropriate funding needs to be allotted to support the assigning of additional judges in those jurisdictions, like Wayne County, in which caseloads are far above recommended standards.

Caseloads of both judges and attorneys⁹⁷ must be reasonable and commensurate with the complexity of child abuse and neglect cases if courts are to make a difference in the lives of children under their jurisdiction. If judges are to give child abuse and neglect cases the attention that they deserve, they must have sufficient time off the bench to prepare for cases, ample time allotted while on the bench to actually hear cases, and adequate time for administrative responsibilities, opinion issuance, and professional and community activities.

The statewide survey findings reveal caseload disparities between smaller and larger jurisdictions. Judges and referees from small jurisdictions were assigned significantly fewer cases for all types of cases, including child abuse and neglect cases, each week than their counterparts from larger jurisdictions. For example, judges from small jurisdictions were assigned an average of 4.84 child abuse and neglect cases each week, compared to judges from large jurisdictions who were assigned an average of 12.23 child abuse and neglect cases each week. Similar trends were reported for all other types of cases. Judges from small jurisdictions were assigned 28.06 cases, in contrast to their large jurisdiction counterparts who reported 34.83 cases assigned to their weekly docket.

The statewide survey also revealed that, perhaps because of higher caseloads, judges and referees from large jurisdictions spent significantly more time on the bench hearing child abuse and neglect cases than their counterparts from smaller jurisdictions. For example, judges from large

⁹⁷As this study focused primarily on probate court processes, it did not address the issue of FIA and private social worker caseloads. Just as with the court and counsel, social workers must have reasonable caseloads in order to competently perform their responsibilities in implementing permanency plans. The Binsfeld Children's Commission Report, *In Our Hands*, recognizes that for social workers to do their jobs, they must have reasonable caseloads. In that section's report on permanency planning, a "priority" recommendation is that "[f]oster care worker staff-to-case ratio will be no higher than one worker for every 20 cases [and that] [p]rotective service worker staff ratio will be no higher than one worker for every 15 cases." Ibid, 33. The Commission identified inadequate FIA staffing allocations as a barrier to effective permanency planning. Ibid.

jurisdictions spent 27.39 percent of their average weekly work time on the bench handling abuse and neglect matters, whereas judges from smaller jurisdictions spent 17.89 percent of their time on the bench presiding over such matters. The difference among referees is even greater. Referees from large jurisdictions spent an average of 22.24 percent time on the bench compared to referees from small jurisdictions who spent 4.05 percent time on the bench.

An analysis of the statewide data on workload characteristics indicates that as the number of child abuse and neglect cases increases, the number of all other types of cases assigned to the weekly docket also increases. Similarly, as the number of child abuse and neglect cases increases, the percentage of time spent on the bench increases. Moreover, as the percentage of time spent preparing for hearings increases, the percentage of time on the bench increases. It is interesting to note that judges and referees from smaller jurisdictions did not spend a significantly greater total amount of time preparing for cases than judges and referees with higher caseloads in larger jurisdictions.

Data on workload characteristics strongly suggest the amount of time spent on the bench is largely affected by the number of child abuse and neglect cases assigned. As cases increase, more time is spent on the bench, as well as on preparation. A large caseload can dramatically affect the amount of time a judge has to prepare a case. This may partly explain why judges and referees from larger jurisdictions do not spend a significantly greater time preparing for cases than their counterparts in smaller jurisdictions: there is simply insufficient time to prepare.

Site visits confirmed the caseload distinctions identified in the statewide survey. From interviews, review of local statistics, and court observation, it appeared that the judges and referees in Wayne County spent more time on the bench, had higher caseloads with more cases assigned to their daily dockets, and had less time off the bench to prepare for cases, than their fellow judges and referees in less populated jurisdictions.

In addition to higher case numbers, arguably, there may be a higher number of complex cases coming before Wayne County's Juvenile Division requiring even more of the court's time. Although this issue was not the subject of case file review, several individuals interviewed conveyed their concerns that the FIA may not be intervening as early as they should in cases and that the court intervenes in cases when family dysfunction is more severe. The question has to be asked whether an urban jurisdiction like Detroit with a significant number of children living in poverty has adequate

family preservation and reunification resources, as well as other programs, to serve a very large population of children and families in need.⁹⁸

Wayne County

In Wayne County, both judges and referees⁹⁹ preside over a full array of child abuse and neglect proceedings, including preliminary removal, adjudicatory, dispositional and subsequent review and permanency planning hearings. In addition, judges also conduct parental rights termination hearings, adoptions, jury trials, delinquency hearings involving waiver to the adult court, appeals from referee recommendations, and guardianships. The four retired, part-time referees are assigned the majority of post-termination of parental rights reviews.

Table Twenty-Three briefly summarizes the 1995 Wayne County Juvenile Division's statistical report on the number of petitions filed in abuse and neglect, adoption, and delinquency cases for the period 1992-1995.

TABLE TWENTY-THREE

Number of Petitions Filed in Abuse, Neglect, Adoption, & Delinquency Cases			
	Abuse & Neglect	Adoption (Children)	Delinquency
1992	2,390	957	8,621
1993	2,249	1,057	8,411
1994	2,321	943	8,450
1995	2,444	1,098	9,669

⁹⁸The Annie E. Casey Foundation has just issued a disturbing report, *City Kids Count*, on the "educational, social, economic, and physical well-being" of children living in fifty United States cities, including Detroit. According to the report, in 1990, Detroit had the highest rate (62%) of children living in "distressed" neighborhoods of all fifty cities. Ibid, 35. These neighborhoods were defined "as communities with high concentrations of poverty, female-headed households, unemployment, and welfare dependency." Ibid, 5. (Copies of the 1997 report can be obtained from the Annie E. Casey Foundation by calling 410-223-2890.)

⁹⁹Pursuant to MCL 712A.10(1)(c) and MCR 5.913(A)(1), referees have the authority to take testimony and submit a signed report detailing their findings and recommendations for disposition to the probate court judge. The judge is the only judicial officer authorized to actually issue a court order. Parties to proceedings can appeal a referee's recommendations by noting an appeal with the probate court judge. This appeal usually consists of a review of the record (e.g., judge listens to a tape recording of previous proceedings) or a presentation of legal arguments by the attorneys for the parties.

The juvenile division also has the responsibility for presiding over ordinance and traffic violation cases involving children and youth. As reflected in Table Twenty-Four's compilation of the statistical report's data, these numbers are significant.

TABLE TWENTY-FOUR

Ordinance and Traffic Violations Received		
	Ordinance	Traffic
1992	5,490	1,762
1993	7,031	2,014
1994	4,168	1,442
1995	8,073	1,873

In reviewing statistics, it is important to keep in mind that increasing numbers of delinquency and ordinance/traffic cases have an impact on the handling of abuse and neglect cases.¹⁰⁰ As stated earlier, the juvenile division's judges and referees handle both kinds of cases. If delinquency numbers rise and laws are implemented making those proceedings more complex and time-consuming, judges and referees will have even less time to conduct quality child abuse and neglect proceedings.

Regarding more specific statistical information on the number of minors under the jurisdiction of the juvenile division and the types of hearings conducted, the statistical report includes this information. Briefly, this report indicates that an estimated 13,916 minors are under the court's jurisdiction in child protective proceedings and approximately 20,086 are under the court's jurisdiction in delinquency matters. As compiled from the Wayne County, Juvenile Division statistical report, Table Twenty-Five provides an overview of hearing activity in child protective proceedings:

¹⁰⁰One attorney who had extensive experience in representing children and youth in both child abuse and delinquency proceedings voiced concern about how "monumental" changes in delinquency laws, effective October 1, 1996, would potentially impact on the quality of juvenile court proceedings, including abuse and neglect. He believed that as a result of these changes in the law, judges and referees would be required to preside over more complex, contested court proceedings, including hearings similar to "bail hearings", significantly more jury trials, and lengthier sentencing hearings. This individual perceived the new laws as creating a disincentive for parties to resolve cases or plea bargain. As will be discussed in this section's recommendations, the impact of changes in delinquency laws on abuse and neglect proceedings, needs to be carefully monitored throughout Michigan.

TABLE TWENTY-FIVE

1995 Wayne County Report Activity in Child Protective Proceedings	
Preliminary Inquiries	0
Preliminary Hearings	2452
Pretrials	2270
Pre-disposition Motion Hearings	9
Pleas/No Contest	728
Bench Trials	2115
Jury Trials	23
Original Dispositional Hearings	1310
Post-Disposition Motion Hearings	143
Dispositional Review Hearings	9134
Progress Review Hearings	0
Termination of Parental Rights Hearings	296
Post-Termination Review Hearings	2457
Rehearings	0
Show Cause Hearings	28
Other Hearings	164

Michigan is one of three states in the nation that permits jury trials in abuse and neglect cases. As was the case in the other sites visited, Wayne County judges and referees related that jury trials occur infrequently. The above statistics appear to support this assertion in that judges presided over twenty-three jury trials. Jury trials are often requested, but parties will often settle prior to a case going to trial.¹⁰¹

¹⁰¹Although the numbers of jury trials may appear to be few, they can be time-consuming for the court, attorneys, and parties. For example, project staff were able to observe an abuse and neglect jury trial. Prospective jurors had to be transported from a downtown court facility to the juvenile court facility. Time had to be spent selecting a jury, as well as instructing jurors on law and procedure. Attorneys also have the perception that jury trials require that they spend additional hours investigating and preparing for a case. Also, jury trial requests may impact on the number of judicial officers presiding over a single cases (only judges can preside over jury trials) and the expeditious scheduling and handling of cases. The issue of jury trials in abuse and neglect cases may warrant further examination.

Despite handling an increasing number of cases, the number of judges and referees in Wayne County's Probate Court, Juvenile Division, has not changed in eleven years. The Juvenile Division is comprised of five judges and twelve referees, plus four retired visiting referees who work part-time. The primary responsibility of fifteen of these judicial officers is to preside over both delinquency and abuse and neglect proceedings full-time. The other two are the Chief Judge and the Chief Referee who in addition to their own individual dockets have numerous administrative responsibilities. Judges are elected to the bench, whereas referees are appointed.

The question arises as to whether caseload levels for Wayne County, Juvenile Division judges and referees compare favorably with recommended levels. In the Kent County probate court study, in which researchers found abuse and neglect caseloads to be reasonable, the average judicial caseload, not including adoptions, was 181 cases.¹⁰² Utilizing the same calculations as were utilized in the Kent County study, it appears that judges and referees in Wayne County have caseloads that are approximately 48.06 percent greater than those of their Kent County counterparts.¹⁰³ Estimating that 9.3 full-time (FTE) judicial officers handle approximately 2,444 new abuse and neglect petitions annually, each FTE judicial officer has a caseload of approximately 267.8 cases.

Roscommon County

The Probate Court presides over approximately thirty-five neglect and abuse cases annually. Some of those interviewed perceived caseloads as increasing and as reflecting "greater severity." The statewide survey revealed that the probate judge spends about ten percent of an average week (forty hours) on the bench hearing child abuse and neglect cases, and that an average of eighteen cases, including one abuse and neglect case, are assigned to his docket each week. In contrast to more urban environments, the juvenile docket did not appear to be heavy, at least on the days of the site visit.

¹⁰²Hardin, Rubin, & Baker, *A Second Court That Works*, 28.

¹⁰³Taking into consideration the other types of cases judges and referees handle in Wayne County, judicial officers are only able to handle abuse and neglect cases part-time (estimated fifty percent of time as referees rotate in and out abuse and neglect assignments weekly). Not including the Chief Judge and Chief Referee, who have significant administrative responsibilities, the Juvenile Division has 5 full-time judges, twelve full-time referees and 4 part-time retired visiting referees (one day per week). Given that each may only handle abuse and neglect cases 50% of the time, the full-time equivalent available to handle 100% of the abuse and neglect caseload is 9.3 judicial officers. If the caseload is determined by the number of new petitions filed annually, 2,444 for 1995, an individual caseload is 267.8 (2,444 divided by 9.3).

Although dockets may not appear to be as great in rural areas as in urban ones, one must keep in mind that rural court judges and referees may have a diversity of responsibilities outside of juvenile court proceedings, such as the handling of adult guardianships or emergency matters, or traveling outside their county to assist in other jurisdictions. It may be that courts in these jurisdictions are better equipped, given fewer cases, to give juvenile cases the attention that they deserve. In contrast to Wayne County, it appeared that the Roscommon County Probate Court was able to allot more time to hear each juvenile case. This does not mean, however, that judges in rural communities are not working hard; it means that caseloads may be reasonable.

Jackson County

The probate court judge hears child protective, delinquency, status offense, and juvenile traffic and ordinance violations proceedings. Those interviewed estimated that one-half of the judge's time is devoted to child protective matters (.5 FTE). The juvenile judge is assisted by one full-time hearing referee. The referee estimates that eighty percent of her time is devoted to delinquency matters, ten percent to juvenile traffic violations, and ten percent to abuse and neglect cases, primarily preliminary hearings (.1 FTE). The referee cannot preside over waiver hearings and jury trials. As judges and referees handling abuse and neglect cases preside over delinquency cases of a more complex and time-consuming nature (e.g., more jury trial demands, more complicated bail hearings, lengthier sentencing hearings), they may have increasingly less time to dedicate to the handling of abuse and neglect cases.

The referee feels that her effectiveness is somewhat reduced by lack of secretarial support. The judge's secretary does type referee hearing orders, but the referee does all of her own docketing. She estimates that about thirty percent of her time is spent on paperwork, ten percent in other administrative functions, and sixty percent on the bench.

Table Twenty-Six below shows the total numbers of petitions filed in each major category in the juvenile division in 1994.¹⁰⁴

TABLE TWENTY-SIX

¹⁰⁴For purposes of calculating caseload, Jackson County probate court had the same number of judicial staff in 1994, as in 1996.

Jackson County Juvenile Filing Statistics for 1994	
Criminal Delinquency	1085
Status Offense	320
Traffic & Ordinance Violations	334
Child Protective	112
Total Number of Petitions	1851

Based on the estimate that the combined time devoted to the caseload of the judge and referee equals about a .6 FTE position, the judicial resources for abuse and neglect actions in Jackson County for 1994 compare favorably with recommended levels, in that the caseload for that year was 187. As stated earlier, the average judicial caseload in Kent County, not including adoptions, was 181 cases.¹⁰⁵ The quality of child abuse and neglect hearings could be adversely affected if judges and referees are required to handle other types of domestic relations cases (e.g., divorce, child support, domestic violence) without a diminishment in their current abuse and neglect docket or without adding judicial officers to handle the influx of other types of domestic relations cases.

Hearing Length

RECOMMENDATION 35.

All judges and referees handling abuse and neglect cases should familiarize themselves with the Resource Guidelines' rationale supporting lengthier court proceedings in routine or non-contested cases.

Commentary:

Recognizing the courts must allot enough time to court hearings if permanency planning and other decisions are to be thoughtful and based on sufficient evidence, the Resource Guidelines recommend time frames for hearing length in non-contested or routine cases. They are:

- Preliminary Protective Hearings (60 minutes);

¹⁰⁵Ibid.

- Adjudicatory Hearings (30 minutes);
- Disposition Hearings (30 minutes);
- Reviews (30 minutes); and
- Adoption Hearings (30 minutes).¹⁰⁶

In the statewide survey, judges and referees were asked to estimate the in-court time spent on each type of child abuse and neglect hearing. The six ranked options included: (1) 0-5 minutes; (2) 6-15 minutes; (3) 16-59 minutes; (4) 1-3 hours; (5) ½ day; and (6) 1+ day. To perform data analysis, researchers "averaged" the ranking values to determine which proceedings have short and long time frames. The mean scores of these averages allowed for a comparison of the amount of time that both judges and referees spend on hearings. (Table Twenty-Seven on the next page details the breakdown of time spent for each type of proceeding for judges and referees.)

Proceedings which took the most amount of time for both judges and referees were contested adjudicatory hearings (majority range of 1-3 hours to 1+ days) and contested termination of parental rights proceedings (majority 1+ days). Other proceedings which showed longer periods for both judges and referees were contested adoption proceedings (majority range of 1-3 hours to 1+ days) and contested permanency planning hearings (judge majority range 1-3 hours to 1+days). Proceedings which had among the shortest hearing times (all less than one hour) were non-removal preliminary hearings, uncontested initial removal hearings, uncontested adjudicatory hearings, uncontested further dispositional hearings, post-termination reviews, and uncontested adoption proceedings.

Several significant differences emerged between the time frames reported by judges as compared to those reported by referees. Referees reported spending a significantly longer amount of time on non-removal preliminary hearings than judges. For four other types of proceedings (contested initial dispositional hearings, contested further dispositional hearings, contested permanency planning hearings, and contested non-periodic review hearings), judges reported that such hearings lasted longer, as compared to the time frames reported by referees. It is interesting to

¹⁰⁶Ibid 107-119. The Resource Guidelines include detailed master checklists outlining the elements of sufficient and effective hearings. Ibid.

note that, although judges and referees reported different time frames for five types of hearings, the time frame reports for the remaining 13 types of hearings were similar.

However, it is troubling that a relatively high percentage of judges and referees are allotting only 6-15 minutes for non-removal preliminary hearings (32.1 percent of judges and 22.5 percent of referees) and uncontested initial removal hearings (29.6 percent of judges and 29.3 percent of referees). Additionally, approximately 5.7 percent of judges estimate that they spend 0-5 minutes on non-removal preliminary and uncontested initial removal hearings. Survey results on hearing length are particularly problematic as they related to preliminary hearings. The Guidelines recommend that these proceedings be allotted at least sixty minutes to allow the court to address issues including, notice and service of process, complaint allegations, evidence introduced by parties, reasonable efforts, parties and attorneys' oral presentations, the issuance of orders, and the scheduling of future hearings.¹⁰⁷

Of all the hearing types listed in the Resource Guidelines, the initial child protective proceeding or preliminary hearing has the greatest amount of time allotted to it, sixty minutes. The Resource Guidelines state that "[a] primary goal of the court should be to make the preliminary protective hearing as thorough and meaningful as possible."¹⁰⁸ In hearing from "all interested persons present," the court must carefully consider where a child shall be placed pending further hearings, whether reasonable efforts have been made to prevent the child's removal from his or her family, and whether additional services need to be offered to the family to keep the family together.¹⁰⁹ It is also a time for the court to "eliminate potential sources of delay in the litigation."¹¹⁰ Even in uncontested cases, the court has the duty to ensure that the parties to the proceedings address each of the above-stated issues.

As discussed earlier, project staff observed court hearings at all three sites. In both Wayne and Jackson Counties, researchers used a brief *Court Observation Form* to gather information during

¹⁰⁷National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 42.

¹⁰⁸National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 30.

¹⁰⁹*Ibid.*, 30-31.

¹¹⁰*Ibid.*, 31.

some of these hearings.¹¹¹ Though the findings are somewhat limited, they appear to corroborate the statewide survey results. In Wayne County, data was collected for sixteen hearings, including eleven uncontested adjudicatory and dispositional hearings, one contested adjudicatory hearing, one dispositional review, and three post-termination review hearings. Hearings were generally short. Based on the fairly wide range between the shortest hearing time (two minutes) and the longest hearing time (90 minutes), researchers used the median, rather than the mean, to determine a standard hearing time. The median hearing length was 10.5 minutes. The average interrupt time (the length of time that a hearing is interrupted by a recess) was about twice as long: 20 minutes. Waiting time (case not called by court as scheduled) was documented in only one case, a three minute delay.

In Jackson County, data were collected for 27 hearings, including one preliminary removal hearing, six contested adjudicatory hearings, two uncontested adjudicatory/dispositional hearings, one contested adjudicatory/disposition hearing, twelve review hearings, one uncontested TPR proceeding, two contested TPR proceedings, and two post-termination reviews.

Hearing times ranged from two minutes to one hour (a contested TPR proceeding), and the mean hearing length was 16.2 minutes. The median hearing time was 11 minutes. Wait time (case not called by court as scheduled) was recorded in only two cases and lasted five minutes or less. Interrupt time (the length of time that a hearing is interrupted by a recess) occurred in only one case, a contested adjudicatory hearing in which the parties awaited the arrival of an attorney for the father who had appeared at the hearing unexpectedly.

In contrast to Wayne County, the court in Roscommon County seemed to be able to allot more time per case. Project staff had the opportunity to observe one child abuse and neglect case and several delinquency hearings, all of which lasted approximately 30 to 45 minutes. They also listened to tape recordings of previous hearings since so few abuse and neglect cases were scheduled the week of the visit. The same held true for these hearings, a preliminary, dispositional review, and post-termination review. All hearings lasted about thirty or more minutes.

Comprehensive Reports Submitted in Timely Manner

¹¹¹Due to the fact that the data collected are very limited and several forms were incomplete, the findings should be considered for descriptive purposes only.

RECOMMENDATION 36.

Courts should require the assigned caseworker to submit a comprehensive report on the progress being made toward the implementation of the case permanency plan. A statute or court rule should be enacted which mandates that these reports be submitted to the court, the parties' attorneys, and unrepresented parties at least seven days prior to the scheduled hearing. Courts should monitor the submission of reports and impose appropriate sanctions for any failure to submit a report in a timely manner.

Commentary:

To prepare for hearings, judges may rely on written reports submitted to the court by the FIA, therapists, counselors, attorneys, FCRBs, CASAs and other involved parties. Statewide survey results provide information on the number of days before the scheduled hearing that written reports are received by judges. One-third of the judges reported that no written report was required by their court for initial removal, non-removal and adjudication proceedings. For jurisdictions in which written reports were required and submitted, most judges reported receiving written reports for initial removal hearings on the same day as the hearing. For non-removal preliminary hearings, approximately one-third of the judges reported receiving the reports on the same day. For adjudicatory hearings, approximately one-fourth of the judges reported receiving written reports two to five days before the hearing.

Following adjudication, report submission appears more timely. For initial dispositional, further dispositional, and permanency planning hearings, nearly one-half of the judges reported receiving written reports two to five days before the hearing. About thirty-seven percent of the judges presiding over judicial reviews reported receiving reports two to five days before the hearing, and an additional 24.6 percent of the judges reported receiving the reports on the same day. For termination of parental rights, post-termination, and adoption hearings, the majority of judges reported receiving reports between two to five days before the hearing and six or more days before the hearing.

Data on court report deadlines, sanctions, and quality ratings were also collected. According to the majority of judges and referees from small jurisdictions (52.3% and 50.0% respectively), deadlines for filing reports were met “most” (66-95%) of the time. Nearly 41 percent of judges and 36.8 percent of referees from large jurisdictions reported that such deadlines were also met “most”

of the time; however, an additional 22.7 percent of judges and 21.2 percent of referees reported that deadlines were met only “often” (36-65% of the time). Even though report deadlines were not always met, few judges and referees from either small or large jurisdictions reported that they imposed sanctions when parties failed to file a report on time.¹¹² Further, the majority of the respondents felt that reports were up to their expected quality standards “most” (66-95%) of the time.

¹¹²As stated earlier, in 1996, Wayne County's Juvenile Division sanctioned approximately 200 FIA workers for failure to submit progress reports in a timely manner. For additional detail on Wayne County's experience, refer to footnote 33, *supra*.

Attendance of Certain Parties at Court Proceedings

RECOMMENDATION 37.

Judges and referees handling abuse and neglect cases should ensure that assigned caseworkers are present for all court proceedings and encourage and mandate the attendance of age-appropriate children.

Commentary:

The statewide survey did not specifically address the attendance of certain individuals at hearings. However, court observation information was gathered in Wayne and Jackson Counties. As the listing below indicates, primary participants included attorneys and parents:

Persons Present At Hearing

Wayne County

Percentage of hearings

(number of hearings observed=16)

Attorney representing agency (FIA)	100.0%
Child's attorney	100.0%
Caseworker	93.8%
Mother's attorney	75.0%
Mother	50.0%
Father's attorney	43.8%
Other agency representative (e.g., foster care worker, supervisor)	25.0%
Father	18.8%
Witnesses	12.5%
Child	6.3%
Foster Parent	0.0%
Relatives other than parents	6.3%
Legal guardian/custodian	6.3%
Attorney for legal guardian	6.3%

Persons Present At Hearing
Jackson County¹¹³

Percentage of hearings
(number of hearings observed=27)

Attorney representing agency (FIA)	96.3%
Child's attorney	96.3%
Caseworker	92.6%
Mother's attorney	88.9%
Mother	63.0%
Father's attorney	59.3%
Father	33.3%
Relatives other than parents	18.5%
Other agency representative (e.g., foster care worker, supervisor)	14.8%
Witnesses	14.8%
Child	7.4%
Foster parents	7.4%
Legal guardian/custodian	7.4%
Attorney for legal guardian	7.4%

Although the percentages for social worker attendance are relatively high in Wayne County (93.8 %), these figures should have been 100 percent. The Resource Guidelines indicate that the assigned caseworker should "always" be present for all proceedings.¹¹⁴ The court cannot proceed with permanency planning considerations, if the agency worker, responsible for providing services to the family and child, is not present. The absence of the assigned caseworker can also result in unnecessary postponements as the court may have to reschedule a case to enable the worker to appear on another day.

¹¹³Percentages may be slightly less than 100 percent for certain categories of individuals in Jackson County due to the fact that one case was dismissed in open court with parties and their attorneys in agreement that their presence was not required.

¹¹⁴National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 107-119.

Similarly, the percentage of children appearing at hearings is very low in both sites. Children appeared in only 6.3 and 7.4 percent of hearings. The Resource Guidelines perceive "age-appropriate children" as individuals who may be needed at hearings.¹¹⁵ In light of the assessment's finding that a significant number of attorneys for children may not be having contact with their clients, children's attendance at court proceedings should be encouraged not only to enable children to meet with their attorneys and the court, but also to give them a "voice" in court proceedings that so directly affect their lives.

Character and Content of Hearings

RECOMMENDATION 38.

In addition to the training recommended previously in this report, judges and referees should receive specific training on the Resource Guidelines, in particular the nature and content of preliminary hearings and permanency planning reviews.

RECOMMENDATION 39.

In order to ensure that the removal of children from their families is the most appropriate plan, courts must issue orders as to whether the FIA or its agents have made or should make "reasonable efforts" to prevent removal through the provision of adequate family preservation services at all preliminary removal hearings.

RECOMMENDATION 40.

Michigan's system for funding foster care and other services to children and families should be evaluated to modify those aspects of the system that create financial disincentives to making negative findings of reasonable efforts.

¹¹⁵Ibid.

RECOMMENDATION 41.

The following recommendations of the Children’s Task Force of the State Bar of Michigan should be adopted:

- **Implement a flexible funding mechanism that allows the court services to follow the family;**
- **Overhaul existing funding statutes so that they are driven by the best interests of the child and not fiscal implications, so that issues such as the following are addressed:**
 1. **Amend existing law so that the reasonable efforts determination required by federal mandate does not carry a financial penalty to the county when the court finds that reasonable efforts have not been made;**
 2. **Amend existing law so that treatment plans and placement decisions are independent of considerations regarding funding sources and the parent’s economic circumstances.¹¹⁶**

RECOMMENDATION 42.

Courts should issue detailed written findings of fact and court orders that clearly state the responsibilities of each party and time frames for satisfying those responsibilities.

RECOMMENDATION 43.

All Michigan courts should work with their local FIA office to determine whether adoption is being considered early enough as a permanency planning option in all appropriate cases. This issue may be especially relevant in urban courts.

¹¹⁶State Bar of Michigan, *Children’s Task Force Final Report*, 126.

Commentary:

Character and Content of Hearings

Initial Removal Hearings

Statewide survey results provide insight on how courts typically conduct initial removal hearings. The most frequent responses of judges and referees, irrespective of jurisdiction size, was that initial removal hearings included the testimony of caseworkers and other witnesses in only 41.8 percent of cases. Other respondents reported the following: only the caseworker testified at initial removal hearings (33.6%); other procedures were used in conducting initial removal hearings (17.3%); or parties and attorneys make presentations as to what the evidence would show and no testimony was taken (7.3%).

Frequency of Reasonable Efforts Determinations

Judges and referees reported in the survey the frequency of judicial determinations of reasonable efforts during various types of hearings. The majority of respondents reported that they “always” (96-100% of the time) made a determination of reasonable efforts at the following hearings: termination of parental rights hearings (74.4%); permanency planning hearings (71.9%); initial dispositional hearings (63.7%); further dispositional hearings (61.5%); and post-termination reviews (51.2%). However, somewhat disturbing, only 49.5 percent of judges and referees indicated that they made reasonable efforts determinations “always” at removal hearings.

As to other types of proceedings, a relatively high percentage of judges and referees indicated that they made reasonable efforts determinations only “some” of the time. Of particular note are the following:

- post-termination hearings in which 39 percent of respondents reported that they made reasonable efforts determinations “some” (11-35%) of the time or less frequently (19.5 percent reported never making reasonable efforts determinations);
- adjudicatory hearings in which nearly one-third of respondents (27.9%) reported that they made reasonable efforts determinations “some” (11-35%) of the time or less frequently;
- non-periodic review hearings in which one-quarter of respondents (24.2%) reported that they made reasonable efforts determinations “some” (11-35%) of the time or less frequently; and

- removal hearings in which 22.4% of respondents indicated they made reasonable efforts determinations "some" (11-35%) of the time or less frequently.

Issues Raised in Connection with Reasonable Efforts

Issues raised in connection with reasonable efforts inquiries were also explored. Over half of the judges and referees reported that the types of services and assistance offered to the family and sufficiency or appropriateness of services offered were issues raised in connection with reasonable efforts determinations most and all of the time (66-100% of the time). Nearly one-third of the judges and referees reported that caseworker diligence in ensuring that services were provided was raised in conjunction with reasonable efforts determinations "some" (11-35%) of the time; followed by 22.2 percent reporting "often" (36-65%); 20.4 percent reporting "most" (66-95%); and 20.4 percent reporting "always" (96-100%). Lastly, over half of the judges and referees reported that availability or timing of services was raised in connection with reasonable efforts determinations between "some" of the time and "often," and an additional 20.4 percent reported that this "always" occurred.

Negative Reasonable Efforts Determinations

Statewide survey results also examined the frequency of negative reasonable efforts determinations and factors limiting such determinations. When judges and referees were asked how often the court made negative reasonable efforts determinations, the majority of respondents (65.2%) stated "rarely" followed by an additional 23.2 percent who stated "never." When asked which factors limit a judicial determination of negative reasonable efforts, 36.3 percent of the respondents reported that the complexity of Michigan's system for funding child welfare services was a factor; 25.7 percent reported that the service delivery system was ill-equipped to provide prevention and reunification services; and 23.0 percent reported that the court had insufficient information to make negative findings. A little over one-third (37.2%) of judges and referees stated that no factors limited their negative reasonable efforts findings.

As reflected in the survey findings, Michigan's system of funding to support children involved with its child welfare system creates a disincentive for judges and referees making negative

reasonable efforts determinations¹¹⁷. The Children's Charter of the Courts of Michigan, Inc., has described the impact as follows:

If a child is AFDC eligible, then out of home foster care is paid on a 50/50 basis between state and federal sources. Counties are not responsible for any of the cost. However, the federal government requires that "reasonable efforts" be made on behalf of children if they are a source of payment. If "reasonable efforts" are not made (as evidenced by a court determination) and federal support stops, then the federal share becomes the responsibility of the county. If the child is not a state ward and the county's child care fund is depleted, then the full cost becomes the sole responsibility of the county.¹¹⁸

Adjudicatory Hearings

In the survey, judges and referees were asked to identify the frequency with which certain events occur during contested adjudicatory hearings. Most responded that opening statements by prosecuting attorneys typically occurred "always" (96-100%) or "most" (66-95%) of the time. The frequency of opening statements by the parent or child's attorney was more varied. Approximately one-fourth of the respondents reported that opening statements by the parent or child's attorney occurred either "some" (11-35%) of the time, "most" of the time, or "always," and opening statements by a GAL/CASA occurred less frequently with over one-half of the respondents reporting that such statements were heard "rarely" (10% or less) and "never" (0%). As CASAs are probably less likely to be appointed during this stage of the proceedings, these low numbers are not altogether surprising.

The majority of the respondents reported that witness direct examination, witness cross examination, closing arguments, and written court orders occurred almost "always" (96-100% of the time); inquiries by the court during examination occurred between "some" (11-35%) of the time and "most" (66-95%) of the time. Clearly, oral findings are more common than written findings as oral

¹¹⁷For a general overview of Michigan's funding system, refer to Foley, Michael, "Funding For Children's Services," *Memo of Children's Charter of the Courts of Michigan, Inc.* (Lansing, MI Fall 1994), 1-2. The article describes sources of payment, such as the Child Care Fund, the State Ward Board and Care Fund, and the AFDC Fund. It states: "The current system for funding delinquency and protective services is confusing. It treats children differently depending upon categories in which they do or do not fit, and in some instances it creates financial disincentives to serve children or monitor case plans through court review." Ibid, 1. See also, State Bar of Michigan, *Children's Task Force Final Report*, 125-127, which addresses funding concerns. That report's recommendations on funding are restated, *supra*.

¹¹⁸Ibid, 2.

findings by the court occurred most frequently, “most” of the time and “always;” and written findings occurred between “rarely” (10%) and “some” (11-35%) of the time.

As addressed more specifically in the above recommendations, the issue of producing written findings after each hearing needs to be addressed by the SCAO and those courts handling child abuse and neglect cases.¹¹⁹ Referring to "written" findings, the Resource Guidelines provide that "it is important that the adjudicatory findings accurately reflect the reasons for state intervention" as "...findings do need to provide enough detailed information to justify agency and court choices for treatment and services."¹²⁰ They further state that "[t]he findings must be specific so that, at a later time, there will be a defensible basis for refusing to return a child home or terminating parental rights if parents fail to improve."¹²¹ Moreover, "all parties [must] understand the court's findings and how they relate to subsequent case planning."¹²²

Permanency Planning Hearings

In Michigan, a permanency planning hearing must be held within 364 days of the initial disposition order, if the child is not returned to the parents or freed for adoption. MCL 712A.19a(1); MCR 5.973(C)(2). This hearing follows the more frequent dispositional review hearings. The content of the permanency planning hearing is very important as the court must review the status of the child and the progress being made toward the child’s return home, and if insufficient progress is being made, determine whether a termination of parental rights petition should be filed. See MCL 712A.19a(2).

The statewide survey inquired about the frequency with which certain issues were addressed during review and permanency planning hearings. The most frequent responses by the judges and referees revealed that visitation with parents (50.0%); treatment for the child (49.5%); type of child’s

¹¹⁹Though this discussion focuses on the court's production of written findings at the conclusion of the adjudicatory hearing, the Resource Guidelines support their issuance to the parties and attorneys after all hearings. See National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 40-41 (Preliminary Protective Hearings), 50 (Adjudication Hearings), 61 (Disposition Hearings), 73 (Review Hearings), 83-84 (Permanency Planning Hearings), and 95 (Termination of Parental Rights Hearings).

¹²⁰National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 50.

¹²¹*Ibid.*

¹²²*Ibid.*

placement (48.5%); and treatment for the parent (47.9%) were issues that "always" (96-100% of the time) arose during the review and permanency planning hearings. Other issues that frequently came up included: school-related issues; appropriateness of out-of-home placement; alternatives to out-of-home placement; visitation with siblings; other party compliance with previous court orders; and appropriateness of permanency plan.

Adequacy and Availability of Services To Children and Families

RECOMMENDATION 44.

Sufficient funds should be appropriated by the Legislature to ensure the establishment of appropriate preventive and reunification services, as well as placement alternatives that ensure a child's safety and at the same time allow for the timely implementation of permanency plans of family reunification, permanent custody, adoption, or independent living.

Commentary:

The provision of adequate, appropriate and accessible services to children and families is essential to the timely implementation of permanency plans. This study's findings indicate that the lack of certain services and programs, including mental health services, therapeutic foster homes, groups homes, and residential treatment programs, in many jurisdictions throughout the state are causing "minor" to "significant" delays in the permanency planning process.

Judges and referees were asked to evaluate the adequacy and availability of services to children and families in their communities and the impact of service adequacy and availability on permanency plan implementation. (See Table Twenty-Eight at the end of this section.) While a significant percentage reported that physical health treatment (51.8%) and substance abuse services (46.4%) were adequate in their jurisdictions, most judges and referees reported a need for improvement in the following services:

- ! mental health services (74.1%),
- ! therapeutic foster care (60.7%),
- ! transportation services (56.3%),
- ! housing assistance (54.5%),
- ! residential treatment (54.5%),

- ! group home placement (52.7%),
- ! economic assistance services (52.2%),
- ! domestic violence treatment (47.3%),
- ! child care (46.4%),
- ! supervised visitation arrangements (44.6%),
- ! parenting skills training (44.6%),
- ! educational services (43.8%),
- ! independent living programs (43.8%), and
- ! vocational services (40.2%).

Even more disturbing, less than half of the respondents reported that FIA monitoring of services was adequate in their jurisdiction. About twelve percent of respondents indicated that FIA monitoring was not available.

Regarding service delivery and its impact on permanency planning implementation, the survey revealed that those services in need of improvement or unavailable, such as mental health treatment, were also perceived by a majority of respondents (57.9%) to cause significant delays in permanency plan implementation. Other services most often listed as causing significant delays included:

- ! residential treatment (46.7%),
- ! therapeutic foster care (35.9%), and
- ! housing assistance (34.4%).

The Children’s Task Force of the State Bar of Michigan has detailed how the availability of services impacts on compliance with orders issued in abuse and neglect cases. The Task Force related that “[t]he ability of the court to rely on the quick and efficient implementation of its orders is critical to the delivery of justice to children within its jurisdiction.”¹²³ It concluded “that the access to services is a serious impediment to the exercise of a judge’s authority.”¹²⁴

¹²³State Bar of Michigan, *Children’s Task Force Final Report*, 128.

¹²⁴Ibid.

Defining access problems, the Task Force added that “services for children may not exist or be available for the use of the judge at all...[and] may be available but not accessible to the client because of geography, limited capacity or administrative impediments.”¹²⁵ The Task Force recommended that an assessment be conducted “on a regional basis” to evaluate “the availability of needed services for children “and that “the recruitment and training of individuals who will be able to fill the need for those services” be “encourag[ed].”¹²⁶

Foster Care Review Boards

RECOMMENDATION 45.

Consideration should be given to the establishment of Foster Care Review Boards in those jurisdictions that currently do not have them.

RECOMMENDATION 46.

The SCAO should work with local FCRB representatives to evaluate how the Boards' recommendations can be more effectively utilized by courts (e.g., scheduling of court review if the FCRB disagrees with agency's permanency plan; attendance of FCRB representatives at hearings to present case reports). Consideration should also be given to how attorneys for the parties can be more actively involved at FCRB hearings.

Commentary:

Because this study addresses issues of courts' involvement in permanency planning, it is important to evaluate whether or not courts consider the recommendations of local FCRBs in counties where they exist (at least fifteen). FCRBs are comprised of citizens from the community who review a sample of children's cases in the locale's foster care system and make recommendations to the court, the FIA, and others about the appropriateness of service delivery. They can be instrumental in identifying barriers to the implementation of permanency plans. As stated in the 1995 State of Michigan Foster Care Review Board Program Annual Report, the benefits of FCRBs can be summarized as follows:

¹²⁵Ibid.

¹²⁶Ibid.

First, citizen reviews develop their own awareness of the foster care system and consequently can help educate the community. Second, over time citizen reviewers become advocates for the needs of children. Informed citizens can become a constituency on behalf of children with the agency, the court, their own families, the legislature, and the community. Third, citizen reviewers can bring a new perspective to the case planning process through participation in case reviews, a perspective which has no vested interest in any single component of the system. Finally, citizen participation in case reviews opens the system to the community which broadens the base of accountability of public social services for children.¹²⁷

According to the statewide survey, one-fourth of judges and referees reported that their jurisdictions had a FCRB. Of those judges and referees, 80.7 percent reported that cases in which a child had been placed in foster care were reviewed by the FCRB 35 percent of the time or less. Most (88.9%) reported that FCRB recommendations were communicated to their courts and were processed in the following ways: reviewed by an assigned judge without a hearing (41.0%); addressed at the time of a regularly scheduled review (35.9%); or reviewed by an assigned referee without a hearing (18.0%). Only 5 percent of recommendations were considered at a special hearing independent of periodic review.

Also reported by judges and referees, FCRB recommendations prompted the filing of termination of parental rights petitions 35 percent of the time or less. The majority of the FCRB recommendations (72%) became part of the court's case file or record. In terms of helpfulness of FCRB recommendations in making judicial decisions, responses were mixed: 10.5 percent indicated that they were "extremely helpful;" 47.4 percent said "very helpful," and 42.1 percent said "not very helpful."

Two of the jurisdictions visited, Wayne and Jackson Counties, have citizen FCRBs. Wayne County has seven FCRBs. They are overseen by an SCAO program representative who is a former supervisor/caseworker with many years working in social services. She recruits and trains members, and coordinates meeting preparation and procedures. In addition to Wayne County's seven FCRBs, this individual also oversees boards in Oakland and Macomb Counties. Cases for FCRB review are selected at random by the SCAO staff member from the FIA's full list. Occasionally, the board

¹²⁷Michigan Supreme Court, State Court Administrative Office, *State of Michigan Foster Care Review Board Program Annual Report* (Lansing, MI 1995), 16.

The FCRB program office recently calculated the amount of in-kind contributions to the state by volunteer citizen reviewers. The estimated amount totaled \$436,572. Michigan Foster Care Review Board Program, "How Much Do You Donate To Citizen Review," *Connections* (Lansing, MI Fall 1996), 2.

reviews a case at the request of an interested party (e.g., foster parent, FIA, attorney), although staff intervention in such cases often resolves the concerns which brought about the request.

Project staff attended a FCRB hearing during the Wayne County site visit. Present at the Board meeting were four board members and two staff, including the FCRB administrator. One staff member performed coordination activities (e.g., typed dictated recommendations, greeted and escorted visitors into board room). There are actually six community members on this board, although two could not attend. The board members attending included an administrative staff member of a local law school, the chief attorney for a major utility company, and two previous foster parents, one with a background in education and one who is a sign language interpreter.

Site visit staff observed one case review, lasting a little over one hour. The FIA caseworker attended the hearing to discuss the case which involved two children currently living with their maternal aunt. The long-term plan for the children is adoption by the aunt. FIA identified the primary barrier to permanence as the aunt's marital status--she is still married, although she has been separated from her husband for several years. The children do not have a relationship with her estranged husband. The FCRB supported the caseworker's recommendation that the maternal aunt should begin divorce proceedings prior to pursuing adoption. If she failed to do so, a recruited adoptive family would be sought. During the review, all board members asked questions regarding the physical and emotional health of the children, as well as the status of other relatives. In addition, they asked about the children's relationship with the aunt's boyfriend. They also discussed the next court hearing date, and clarified the goals of the long-term plan.

The Wayne County FCRB staff provided members with copies of case information for the following month's meeting. Board members stated that they will follow cases for as long as they feel it is necessary. All parties in the case receive copies of the FCRB recommendations, and many of the Board members indicated that they attend court hearings on the cases they review. FIA caseworkers are not required to attend FCRB meetings, but are "strongly encouraged," and in fact most do participate. On occasion, foster parents, parents, attorneys, and even the children themselves will attend the review. Forms are provided for these parties to submit information if they cannot physically attend the meeting. Board members also felt that at times they get insufficient information about cases. Parties may fail to submit important information, and particularly in cases with multiple children, this can distort the information being provided to the FCRB.

Interviews with Wayne County's court personnel mirrored statewide survey results. Some found FCRB recommendations very helpful, whereas others did not. FCRB reports in Wayne County are typically reviewed by the assigned judge or referee and may be addressed at the time of the regularly scheduled review.

In Jackson County, several of those interviewed indicated that the FCRB can have a positive impact on caseworker decisions, particularly in helping to persuade the agency to proceed with a petition for termination of parental rights. Generally, attorneys for the parties do not attend review board hearings. Some court participants feel that the FCRB has little impact on case progress in the court, primarily because the court is also frequently reviewing cases and ensuring that they are moving toward resolution in a timely manner.

Indian Child Welfare Act (ICWA)

RECOMMENDATION 47.

A state statutory provision or court rule should be enacted that requires all judges and referees to inquire fully as to whether or not an Indian child is the subject of a neglect and abuse petition at the preliminary hearing in all cases. The SCAO should work with local courts to insure that their preliminary hearing form orders include language on the court's inquiry about the child's Indian heritage.

Commentary:

Although this study did not specifically measure this outcome, the permanency planning process can be detrimentally impacted if the appropriate Indian tribe is not notified in a timely manner of an Indian child's involvement with the state or local child welfare system in accordance with the ICWA. For instance, a child may suffer a disrupted adoption if it is discovered that a tribe was not notified and ICWA placement preferences not considered by the court as required by the Act. This assessment reveals that the following issues are in need of further study:

- whether and how courts identify the applicability of the ICWA in abuse and neglect cases,¹²⁸

¹²⁸During the course of this study, the issue was raised as to how courts identify whether an Indian child is involved. One expert on the ICWA indicated that a "visual" inspection of the child is insufficient in determining whether a child is Indian. It is imperative that the court inquire further, including asking all parties, social workers, attorneys, and GALs about whether they have knowledge of the child's background and the basis for that knowledge. Preliminary hearing form orders currently

- whether judges and referees are interpreting the ICWA correctly;
- the adequacy of current ICWA training curriculum for judges, lawyers, GALs, CASAs, case workers, FCRB members, and other appropriate court participants; and if none exists, the development of mandatory ICWA training curriculum for court participants that fully addresses the complexity of ICWA issues; and
- the establishment of appropriate and ongoing forums for state court and tribal personnel to discuss ICWA requirements and resolve concerns.¹²⁹

It is essential that the judiciary identify all children that come under the auspices of the Indian Child Welfare Act (ICWA) and that they be experts on that Act's requirements.¹³⁰ United States Census data for 1990 reflect that American Indian, Eskimo, or Aleut, an estimated 55,638 people, reside in all Michigan Counties.¹³¹ In addition, ten Indian reservations exist throughout the state. Given the significant number of American Indians that live in Michigan, adjacent states, or in bordering Canada, statewide survey findings are troubling and warrant further study.

The statewide survey results reflect that judicial officers may be in need of or desire training on the ICWA. Only 55.9 percent of judges and 53.3 percent of referees had received training on the Act with an estimated 48.5 percent of judges and 42.2 percent of referees requesting training. The survey indicated that 61.1 percent of judges and referees had presided over ICWA cases.

For those courts handling ICWA cases, the majority (87.5 %) gave tribal court orders full faith and credit. However, only 40 percent of respondents acknowledged that their courts made a full inquiry, "always" (96-100% of time), into the active remedial efforts undertaken by the state agency to prevent placement of a child in an ICWA case. The remaining 60 percent related that they made a full inquiry as follows: 25 percent "most" (66-95% of the time); 10 percent "often" (36-65% of the time); 1.7 percent "sometimes" (11-35% of the time); 15 percent "rarely" (10% of the time); and 8.3% "never." Similarly, only 50.8 percent of judges and referees "always" (96-100% of time)

in use include language on the court's inquiry into a child's Indian heritage.

¹²⁹In 1992 a forum was convened in Michigan to address tribal court and state court relationships. A report on the forum entitled *Michigan Indian Tribal Court/State Trial Court Forum* was submitted to the Michigan Supreme Court. Recommendations as outlined in that report should be revisited to assess whether they have been implemented.

¹³⁰25 USC §§ 1901-1923, 1951.

¹³¹U.S. Bureau of the Census, *County and City Data Book* (Washington, DC: U.S. Government Printing Office, 1994).

considered whether the state agency had complied with the child placement preferences prescribed by ICWA. Arguably, 100 percent of judges and referees should have responded that in ICWA cases, they made full inquiry into the state agency's efforts to prevent placement and comply with the ICWA's child placement preferences. In addition, only one-fifth of the respondents reported that a regular forum existed for state court and tribal personnel to discuss ICWA requirements. (See Table Twenty-Nine)

Children can be needlessly traumatized by the courts' failure to identify the applicability of the ICWA to their cases. Although this study did not specifically address this issue, the permanency planning process can be detrimentally impacted if the appropriate Indian tribe is not notified in a timely manner of an Indian child's involvement in the child welfare system. For instance, a child may suffer a disrupted adoption if it is discovered that a tribe was not notified and ICWA placement preferences not considered by the court. As stated in the recommendations, the survey results mandate further study of ICWA issues.¹³²

¹³²See Alaska Judicial Council, *Improving the Court Process for Alaska's Children in Need of Aid* (Anchorage, Alaska 1996) for recommendations related to the ICWA.

Estimated In-Court Time Per Type of Hearing

TABLE 27. Type of Proceeding		0-5 minutes	6-15 minutes	16-59 minutes	1-3 hours	1/2 day	1+ days
Nonremoval preliminary*	Judges	5.7%	32.1%	58.5%	3.8%	-	-
	Referees	-	22.5%	75.0%	2.5%	-	-
Uncontested initial removal	Judges	5.6%	29.6%	63.0%	1.9%	-	-
	Referees	-	29.3%	70.7%	-	-	-
Contested initial removal	Judges	-	-	52.8%	41.5%	5.7%	-
	Referees	-	-	54.8%	42.9%	2.4%	-
Uncontested adjudicatory	Judges	-	17.5%	81.0%	1.6%	-	-
	Referees	-	18.2%	77.3%	4.5%	-	-
Contested adjudicatory	Judges	-	-	7.9%	23.8%	22.2%	46.0%
	Referees	-	-	17.6%	29.4%	29.4%	23.5%
Uncontested initial disposition	Judges	1.6%	25.4%	69.8%	3.2%	-	-
	Referees	-	36.8%	63.2%	-	-	-
Contested initial disposition*	Judges	-	-	35.5%	48.4%	12.9%	3.2%
	Referees	-	-	72.2%	27.8%	-	-
Uncontested further dispositional	Judges	3.2%	34.9%	58.7%	3.2%	-	-
	Referees	-	42.9%	52.4%	4.8%	-	-
Contested further dispositional*	Judges	-	1.6%	42.6%	49.2%	6.6%	-
	Referees	-	-	71.4%	28.6%	-	-
Uncontested permanency planning	Judges	4.8%	23.8%	65.1%	6.3%	-	-
	Referees	-	40.0%	55.0%	5.0%	-	-
Contested permanency planning*	Judges	-	-	26.2%	52.5%	9.8%	11.5%
	Referees	-	-	55.6%	38.9%	5.6%	-
Uncontested non-periodic reviews	Judges	8.2%	34.4%	54.1%	1.6%	-	1.6%
	Referees	5.0%	50.0%	40.0%	5.0%	-	-
Contested non-periodic reviews*	Judges	-	1.7%	51.7%	43.1%	3.4%	-
	Referees	-	10.5%	68.4%	21.1%	-	-
Uncontested TPR hearings	Judges	1.7%	11.9%	55.9%	25.4%	5.1%	-
	Referees	-	16.7%	66.7%	16.7%	-	-
Contested TPR hearings	Judges	-	-	-	13.1%	9.8%	77.0%
	Referees	-	-	-	16.7%	33.3%	50.0%
Post termination reviews	Judges	9.5%	47.6%	39.7%	1.6%	1.6%	-
	Referees	-	60.0%	35.0%	5.0%	-	-
Uncontested adoption proceedings	Judges	1.6%	54.0%	41.3%	3.2%	-	-
	Referees	-	55.6%	44.4%	-	-	-
Contested adoption proceedings	Judges	-	2.0%	14.3%	34.7%	28.6%	20.4%
	Referees	-	-	14.3%	42.9%	42.9%	-

*Proceedings which showed significant differences in the amount of time spent by judges as compared to referees. Non-removal preliminary hearings were the only type of hearing in which referees reported spending a significantly longer time than judges.

TABLE TWENTY-EIGHT

**Impact of Service Adequacy/Availability on Permanency Plan Implementation
as Perceived by Judges and Referees**

	<u>Impact of Services on Permanency Plan</u>		
	No Delay	Minor Delay	Significant Delay
Type of Service:	Percentage		
Economic Assistance	51.2	31.0	17.9
Child Care	51.1	40.9	8.0
Parenting Skills Training	32.6	45.3	22.1
Housing Assistance	21.5	44.1	34.4
Transportation	32.3	49.0	18.8
Educational Services	52.8	40.4	6.7
Vocational Training	51.3	38.5	10.3
Supervised Visitation	49.5	37.1	13.4
Mental Health Treatment	9.5	32.6	57.9
Physical Health Treatment	64.9	31.9	3.2
Substance Abuse Treatment	37.1	35.1	27.8
Domestic Violence Treatment	37.4	46.2	16.5
Residential Treatment	16.3	37.0	46.7
Therapeutic Foster Care	20.7	43.5	35.9
Group Home Placement	33.0	46.6	20.5
Independent Living Programs	40.0	48.2	11.8
DSS Monitoring of Services	46.3	38.9	14.7

TABLE TWENTY-NINE**Responses of Judges and Referees Regarding the Indian Child Welfare Act**

	N	Percentage
Have you ever presided over a case involving the ICWA?		
Yes	66	61.1
No	42	38.9
If yes, does your local court give tribal court orders full faith and credit?		
Yes	56	87.5
No	8	12.5
How often does the court make a full inquiry into active remedial efforts undertaken by the state agency to prevent placement of the child in an ICWA case?		
Never (0%)	5	8.3
Rarely (10%)	9	15.0
Sometimes (11-35%)	1	1.7
Often (36-65%)	6	10.0
Most (66-95%)	15	25.0
Always (96-100%)	24	40.0
How often does the court consider whether the state agency has complied with the child placement preferences prescribed by ICWA?		
Never (0%)	3	5.1
Rarely (10%)	4	6.8
Sometimes (11-35%)	5	8.5
Often (36-65%)	4	6.8
Most (66-95%)	13	22.0
Always (96-100%)	30	50.8
Is there a regular forum available for state court and tribal personnel, including judges, for joint discussion on the requirements of the ICWA?		
Yes	9	10.5
No	77	89.5

XII. RECOMMENDATIONS ON ALTERNATIVE DISPUTE RESOLUTION/FAMILY GROUP CONFERENCES

RECOMMENDATION 48.

The Court Improvement Project Advisory Board, local courts, and the SCAO should investigate, establish, and evaluate demonstration alternative dispute resolution (ADR) programs in child abuse and neglect cases in selected sites in accordance with the Resource Guidelines.

RECOMMENDATION 49.

The SCAO should identify Michigan courts that may be using the services of mediators in child abuse and neglect cases and examine the effectiveness of those programs in resolving disputes in the best interest of the child.

RECOMMENDATION 50.

As unified family courts are established within Michigan, consideration should also be given to expanding already existing domestic relations mediation programs to the realm of abuse and neglect cases taking into account the Resource Guidelines' admonition that mediators be knowledgeable on all aspects of child welfare.

RECOMMENDATION 51.

The Kent County model project on family group conferences should be evaluated for effectiveness and possible replication in other Michigan counties.

Commentary:

Distinct from the process whereby the parties, usually through their attorneys, negotiate case settlements, alternative dispute resolution (ADR) is a process whereby a trained, neutral third party, known as a mediator, meets with all pertinent parties to a court action to facilitate a case resolution agreeable to them.¹³³ As stated in the Resource Guidelines, “[b]y formalizing the settlement process,

¹³³For additional information on studies of family mediation, see Pearson, Jessica, “Family Mediation,” *National Symposium on Court-Connected Dispute Resolution Research: A Report on Current Research Findings-Implications for Courts and Future Research Needs* (State Justice Institute, National Center For State Courts 1994), 51-89.

mediation can often replace contested hearings by resolving cases in a more constructive format than adversarial proceedings.”¹³⁴ Mediation programs have been established in a number of courts around the country, including selected sites in Connecticut, Florida, California, Maryland, Oregon¹³⁵, and Colorado, to divert cases from the formal court process, to help the parties reach agreement prior to contested hearings, to negotiate case plans, and to address permanency planning concerns. This court improvement assessment did not specifically identify ADR programs operating in Michigan, although the judge and referee survey indicated that 27.8 percent of respondents reported that ADR programs were available to their courts in abuse and neglect cases.¹³⁶

In addition to ADR, family group conferences or family unity meetings, a process based on a model first developed in New Zealand, are being tested in sites in Michigan (Kent County),¹³⁷ Kansas, Oregon, and Vermont. The conferences attempt to bring together professionals and the child’s immediate and extended family members to help develop a solution to the problems that necessitated state involvement with the family. The process, which has been common in New Zealand for more than ten years, has been credited with greatly increasing the number of children who are returned home quickly and substantially reducing non-relative out-of-home placements in that country.¹³⁸

Advocates of mediation and family group conferences assert that these processes empower families and foster self-reliance and responsibility. Consideration of pilot ADR and family group

¹³⁴National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 134.

¹³⁵One Oregon social services agency has been using permanency planning mediation successfully to reduce time and conflicts in reaching termination of parental rights.

¹³⁶The response rate to this question may have been impacted by the judiciary’s perception that ADR was equivalent to the pretrial conference or informal settlement process that does not involve the use of a professional mediator.

¹³⁷According to staff of the Kent County family group conference project, the program has focused its attention on the cases of “children of color.” Since the program’s inception in December 1995, project staff have reported a substantial diminishment in the number of “children of color” entering the foster care system as alternative placements, usually relatives, and necessary services are identified to keep children with their families. The project, known at the “Families For Kids Initiative” is administered by The Grand Rapids Foundation and is supported by a grant from the W. K. Kellogg Foundation.

¹³⁸See Hardin, M., Cole, E., Lancour, R., *Family Group Conferences in Child Abuse and Neglect Cases: Learning From the Experience of New Zealand* (Washington, D.C.: American Bar Association Center on Children and the Law 1996).

conference methods should be an element of court improvement planning. The Resource Guidelines set out the following guidelines for implementing mediation programs:

- “Mediation programs should be court-based or court-supervised and have strong judicial and interdisciplinary support.”
- “Mediators must be highly trained, experienced and skilled professionals, have credibility with the court and related professionals, and be perceived by family members as being neutral and having the best interests of the child and family at heart.”
- “Mediation can be helpful in resolving dispositional, post-dispositional, and some jurisdictional issues.”
- “Mediation is appropriate in only a selected number of cases, but when ordered by the court, participation in mediation program should be mandatory.”
- “Mediation should be confidential.”
- “Mediated agreements should become part of the court record.”
- “Mediated agreements should be specific and detailed.”¹³⁹

¹³⁹National Council of Juvenile and Family Court Judges, *Resource guidelines*, 135-138.

XIII. OTHER RECOMMENDATIONS RELEVANT TO THE TIMELY IMPLEMENTATION OF PERMANENCY PLANS

Permanent Guardianship

RECOMMENDATION 52.

Courts should have the authority to order permanent guardianship, power of attorney or “stand-by” guardianship, or open adoption as an alternative permanency plan.

RECOMMENDATION 53.

The recommendations of the State Bar of Michigan Children’s Task Force on permanent guardianship should be adopted.¹⁴⁰

¹⁴⁰The Task Force’s recommendation on modifying the law as it relates to subject matter jurisdiction over guardianships of minors so that both circuit and probate courts can address such matters is not included here as recently enacted MCL 600.1001 et.seq. dealing with the creation of a unified family court system resolves the issue.

In addition to existing statutory grounds for guardianship in MCL 700.424, the Michigan legislature should create an additional basis for guardianship as follows:

- a. Standing Test: A person is entitled to a hearing under this new section if: 1) the child has resided continuously with a third person for a minimum period of time as established by the legislature so long as such residence has not been established in violation of a valid court order. The minimum period of time set by the legislature should be 3 months if the child has not reached his/her 2nd birthday, 6 months if the child has reached his/her 2nd birthday and not yet reached his/her 6th birthday, and 1 year if the child is 6 years of age or older; 2) the child has resided with the third person within 5 months of filing the action; and 3) the parent or parents of the child have failed to provide the child with parental care, love, guidance and attention appropriate to the child’s age and individual needs resulting in a substantial disruption of the parent-child relationship. This resolution does not expand the standing of foster parents to seek guardianships.
- b) Best Interests Test: If the court finds the above test met, it may grant guardianship under this new section if it finds it is in the best interests of the child to do so according to the best interest factors in the Child Custody Act plus an additional factor - the court shall consider the reasons for the placement of the child with the third person.
- c) Presumption in favor of parents: If the dispute is between a third party and a parent, the court shall presume that the best interests of the child are served by denying the guardianship in favor of such parent unless the need for the guardianship in the best interests of the child is established by clear and convincing evidence.
- d) Standard on Termination: If termination of a guardianship is requested by a parent, the court shall not terminate the guardianship unless it is established by clear and convincing evidence that it is in the best interests of the child to do so. A case plan would be required only when the court orders reunification of the child and parent.

A guardianship under this proposal may continue indefinitely as required by the best interest of the child.

Under this proposal the court may order child support by the legal parents and provide visitation to the parents, enforceable by the Friend of the Court pursuant to statute.

Open Adoption

RECOMMENDATION 54.

In order to increase permanency planning options for children, consideration should also be given to enacting legislation that permits “open” adoption which in appropriate cases, allows a child and his or her biological family to maintain contact after an adoption decree is issued.

The court shall appoint an attorney or guardian ad litem for the child.

The court shall appoint an attorney for an indigent party. The court may order the payment of attorney fees of one party by another.

Appeal from guardianship orders shall be to the Courts of Appeals.

Nothing in this resolution is intended to limit the Probate Court’s authority to grant guardianships under existing law.

The investigations and reports needed by the courts to decide guardianships and set support may be completed by the Friend of the Court. MCL 722.26b (MSA 25.312(6b)) will be removed from the Child Custody Act, for it is no longer needed to give guardians the standing to seek custody under the Child Custody Act and provide for cross court assignment.

Kinship Care

RECOMMENDATION 55.

The recommendations of the State Bar of Michigan Children’s Task Force on expanding the statutory definition of “relative” for purposes of child placement should be considered for implementation.”¹⁴¹ The Recommendations incorporated herein state:

The Task Force recommends that the Michigan Legislature expand MCL 712A.18(1); MSA 27.3178(598.18(1)) to allow for placement of children in conformity to Act 116 of the Child Care Licensing and Regulation Act, MCL 722.115a; MSA 25.358(15).¹⁴²

It is further recommended that the Michigan Legislature clarify the definition of suitable relative placements in child protective proceedings to allow the court the discretion to define “relatives” within the context of the family relationship and community norms. Act 116 of the Child Care Licensing & Regulation Act should be amended to allow for this expanded definition.¹⁴³

RECOMMENDATION 56.

Kinship caregivers should receive adequate financial subsidies and appropriate services that will encourage kinship care for children who otherwise would be placed in the public foster care system.

Commentary:

In order to ensure that children have as many options for permanency as possible, consideration must also be given to enacting or amending Michigan law so that courts will have the authority to order more than a return home, termination of parental rights, or traditional adoption. For appropriate cases, these additional options for permanency would include a permanent form of guardianship,¹⁴⁴ as well as open adoption with post-adoption visitation for biological parents and

¹⁴¹Ibid, 70.

¹⁴²Ibid.

¹⁴³Ibid.

¹⁴⁴Also worth exploring is “stand-by” guardianship. This guardianship enables a child’s parent to sign a document authorizing another to consent to his or her child’s medical care, receipt of educational services, and other needs if the parent is unable to do so. For an in-depth discussion of such a law, see Mandelbaum, R., Waysdorf, S., “The District of Columbia Medical Consent Law: Moving Towards Legal Recognition of Kinship Caregiving,” *The District of Columbia Law Review*

siblings. As the State Bar of Michigan Children’s Task Force recognized, “[a]bsent a petition alleging abuse and neglect or an existing guardianship, neither the probate court nor the circuit court has a clear mechanism to address the custody of a child who has been left in the care and custody of a third party for an extended period of time with little or no parental contact and whose parents desire to regain custody of the child.”¹⁴⁵ Michigan law currently provides for two types of guardianship, “limited” and “full,” but both anticipate an eventual return of a child to the biological parents if the parents demand it.¹⁴⁶ The Task Force’s recommendations for statutory change are cited in this section’s recommendations.

Regarding the issue of “open” adoption, consideration should also be given to enacting legislation that would permit adoption and at the same time visitation between a child and his or her biological family post-adoption. In appropriate cases, open adoption can result in a more expedited handling of a case in that parents may be more likely to consent to an adoption that allows them some continued contact with their child. This in effect may afford a greater number of children permanency in their lives and at the same time diminish court and attorney time spent on contested TPR trials and appeals.

Finally, given the large percentage of children who are placed with relatives once they enter the foster care system (see Table Thirty), it is essential that “kinship” care concerns be further examined. One Michigan consultant to this project perceived “stabilizing a child in the extended family [as] often the most meaningful form of permanency planning.” He added that such stabilization “helps the court by reducing the number of cases the court has to actually adjudicate and it reduces the time during which a case might stay active with the court.” In addition to modifying current Michigan law relevant to guardianship of minors as recommended above, consideration must also be given to the creation of subsidized guardianships that provide kinship caregivers with adequate financial support and services so that they are able to provide quality care to a child who has suffered abuse and neglect.

2, no. 2 (Spring 1994).

¹⁴⁵Ibid, 64.

¹⁴⁶For detailed commentary on the Children’s Task Force’s recommendations relevant to third party standing and kinship care, see State Bar of Michigan, *Children’s Task Force Final Report*, 63-71.

TABLE THIRTY**Children's Placement with Relatives**

Was Child Primarily in Relative Placement?	Number of Cases	Yes		No	
		Number	Percentage	Number	Percentage
Wayne (Detroit)	93	35	37.6%	58	62.4%
Jackson	49	4	12.9%	27	87.1%
Roscommon	8	3	37.5%	5	62.5%

XIV. RECOMMENDATIONS ON COURT FACILITIES

RECOMMENDATION 57.

In light of creation of the family division of the circuit court, and because it is in the best interest of children, sufficient funding should be appropriated by the legislature so that all Michigan courthouse facilities being used for child abuse and neglect proceedings come into compliance with the Resource Guidelines. In all facilities handling child abuse and neglect cases, the following need to be created or, if currently available, maintained:

- **adequate waiting and play rooms that are "child-friendly" and designated for children;**
- **courtrooms that are separate and apart from courtrooms used for criminal and other civil cases, including delinquency cases;**
- **adequate courtrooms so that all court participants, including judicial officers, court staff, attorneys for the parties, can be comfortably seated; attorneys should have access to adequate counsel table space to allow for consultation with clients and for the taking of notes and reviewing of files and other appropriate materials;**
- **Adequate and private conference rooms (in the vicinity of the juvenile courtrooms) that enable attorneys to consult with their clients, including child clients;**
- **Consistent policies about confidentiality of files and the public's access to child abuse and neglect hearings.**

Commentary:

In the overall scheme of juvenile court improvement, it might appear at first glance that the enhancement of juvenile court facilities is a low priority. However, it should not be. The physical environment of a juvenile court can have an immense impact on how children and families perceive court intervention and on whether judges, referees, attorneys, social workers, and others are able to work effectively and efficiently. The Resource Guidelines state the following as to juvenile court facilities:

- "The courthouse should be centrally located in the community it serves and should be readily accessible through mass transit."

- "The courtroom itself should be separate and apart from courtrooms used for adult and criminal and civil cases. Ideally, courtrooms used for abuse and neglect cases should be physically separated from courtrooms used for other juvenile court proceedings. If this is not feasible, child abuse and neglect cases can be separated from other matters on the court's docket through scheduling."
- "Hearings should be held in a courtroom sufficient to accommodate the judicial officer and court staff, the agency attorney and social worker, the guardian ad litem, the custodial and non-custodial parents and their attorneys."
- "Appropriate recording equipment should be available."
- "The courtroom must have adequate seating capacity, but need not have the appearance of a traditional courtroom. Smaller but comfortable courtrooms are often appropriate. The use of a conventional courtroom may be intimidating to children appearing before the court."
- "The judge should exercise some discretion in protecting the privacy interests of each party. Persons not directly involved in the hearing should not be permitted to be present in the courtroom. Other space should be provided for parties, witnesses, and attorneys waiting for hearings in the same court."
- "The courtroom should have a telephone. A bailiff should be in the courtroom, and the judge should have a silent buzzer or other device available to obtain additional security personnel when necessary."¹⁴⁷

Michigan Compliance with the Guidelines

Project staff did not have opportunity to visit all juvenile court facilities in Michigan. However, they did visit court facilities in Wayne, Jackson and Roscommon Counties.

Wayne County

The Wayne County Probate Court, Juvenile Division is housed in the James H. Lincoln Hall of Juvenile Justice (a/k/a "new building") and the Old Court Building located at 1025 East Forest Avenue, approximately two miles from Detroit's downtown business district. Built in 1977, the Hall of Justice can be described as utilitarian and outgrown.¹⁴⁸ The building is not designed for children

¹⁴⁷National Council of Juvenile and Family Court Judges, *Resource Guidelines*, 24.

¹⁴⁸Project staff had varying perceptions of this building, some being more critical than others. For instance, some perceived the building as being less well-maintained than others. Although the availability of comfortable and appropriate waiting room areas for both children and adults appeared to be the primary problems, one project staff member observed that at least referee

and the interior decor is stark. The waiting areas adjacent to hallways can be noisy, crowded. They are full of harsh textures--brick and cinder block walls and metal bus terminal seating. Attorneys have a starkly furnished room to meet with other attorneys in between hearings.¹⁴⁹ No play areas for children or child-friendly interview rooms exist. In addition, most respondents expressed concern that heating and air-conditioning systems in both the old and new buildings were constantly malfunctioning.¹⁵⁰

Referee courtrooms are small and uncomfortable. Because courtrooms are opened to the public and participants (e.g., parties and witnesses) involved in different cases may be in the courtrooms at the same time, they can be quite crowded. This is especially problematic when children must testify in court. A court hearing was observed in which a very young girl had to testify about sexual abuse perpetrated against her. It appeared to be the first time this issue had been addressed in court. The referee's courtroom was filled to capacity. One could sense the extreme discomfort, pain and embarrassment of the girl as she found herself sharing her abusive experience in front of so many strangers. Because of the courtroom's small size, court participants, witnesses, and others were "on top of her" as she testified. Likewise, referee offices are also very small, barely able to accommodate a desk and possibly a child who may have to be interviewed in chambers.

Judges' courtrooms are more spacious than those of the referees. Each judge courtroom has a eight person jury box. The judges' offices, adjacent to their courtrooms, though for the most part windowless, were much larger than those of the referees.

A tour of the case file room revealed a relatively large storage space with court staff's desks interspersed throughout the room. Also sharing this space were staff involved in the issuance of service of process.

Space is at a premium and should judicial staff increase in the future, there will be an insufficient number of courtrooms. It was the consensus of most court personnel and others that

courtrooms seemed nicely furnished and had the appearance of a courtroom (in some jurisdictions outside of Michigan, referee courtrooms do not have a judicial appearance; they may have a table for the referee's bench and create an atmosphere of greater informality).

¹⁴⁹The Court Crier (August 1996), a courthouse newsletter for lawyers, announced that a "new and improved attorney lounge" was under construction with an anticipated completion date of early September 1996. The article indicated that the current attorney lounge would be turned into staff offices.

¹⁵⁰In fact, during project staff's site visit this summer, the "old" building housing the juvenile court register's area did not have air-conditioning. The offices were stifling and not conducive to productive work.

more space was needed for all court personnel, especially as caseload demands grow and courthouse space is used for special and other programs relevant to juvenile court proceedings (e.g., Families First, CASA, division to collect out-of-home care payments).

Several individuals interviewed voiced concern about their personal safety in the courthouse and neighboring vicinity. One court employee related two incidents in which a referee and an attorney were seriously injured on or near courthouse premises. In one case, a belligerent parent hit a referee in the face with a brick causing a disabling injury; in the other, an attorney leaving the courthouse was robbed at gunpoint and shot in the face. Not only must participants in this courthouse face the anger that may erupt when juvenile courts deal with family violence, they must deal with the reality of working in a relatively "high crime" area of Detroit. After a study was completed on courthouse security, some court personnel perceived security as "much better than it was." The general public may use only one entrance to the courthouse which is guarded and must go through a metal detector and have their bags searched manually. At this time of the site visit, the baggage detector was not operating.

Attorneys are required to present a current bar card. Most courtrooms appeared to be locked at all times with court officers controlling access.

However, a number of security issues should be noted. Although project staff observed armed officers at potential access points in the "new" building, one staff member noted a back entrance unattended and propped open. Moreover, the potential for violence was observed in one courtroom when a parent appeared to be "high" on some substance.

Though judges have armed officers in their courtrooms, referees do not. Referees did indicate that if they believed violence might erupt during a proceeding, they could arrange to have armed personnel in their courtrooms. They also have buzzers in their courtrooms if an emergency arises and law enforcement assistance is required. Moreover, a judicial officer's calendar may require him or her to transition between delinquency and abuse cases on the same day mixing delinquent and nondelinquent children in the same courtroom and waiting area.

Roscommon County

Almost all individuals interviewed stated that the Probate Court was in need of better facilities. The probate courtroom is far too small. There is insufficient space for a jury box. If more

than two attorneys appear on behalf of the parties, which is often the case, there is no room for all attorneys to sit at counsel's table, let alone with their clients next to them.

Project staff observed this insufficiency of space while attending an abuse and neglect preliminary hearing. The courtroom was overflowing. At least four attorneys were present for the parties, in addition to their clients and witnesses. Attorneys who were making legal arguments on behalf of their clients were forced to make their presentations to the court from the audience. It is hard to imagine attorneys trying a contested trial in which they would need to have desk space to take notes, have ready access to their files, and be in close proximity to their clients for consultation purposes.

During project staff's visit to Roscommon County, they did not encounter the crowded waiting rooms that one might see in an urban area. However, an area did not exist for children to wait or consult in private with their attorneys. The probate court waiting room area was actually the hallway leading into the courthouse. There is also no conference area for the attorneys to negotiate case settlements.

Regarding courthouse security, no guards or metal detectors sit at entrance ways. Project staff did not get the impression from the probate court judge, court staff or others that security is a concern. Should court personnel have concerns about potential violence in the courtroom, a bailiff can be called. The judge has access to an emergency buzzer at the bench. During court hearings, the door to the juvenile court hearing room is usually locked. Access to the courtroom can be gained through the court office.

Additional file storage space is needed. Space for files might be increased to some extent if the court installed lateral files, as opposed to the "stand up" files currently in use. Court personnel also related that problems exist with the building's heating and air conditioning systems.

Jackson County

The courthouse is housed in a building constructed in the first half of the twentieth century. Two small courtrooms are located on the second floor of the building, along with the judge's chambers and small offices for the referees. Prior to a recent decision to proceed with court consolidation and physical integration of juvenile court operations into the circuit court facility, a substantial renovation was planned for the juvenile court building, including improved access and central air-conditioning. The second floor, containing the two small courtrooms, judges chambers,

and offices for the magistrates, was partially renovated before the decision was made to move the court.

The small courtroom is set up like a conference room and is used primarily by the referee. Space is limited in the larger courtroom. Counsel tables are very close together, and there is inadequate room to comfortably seat all parties when both parents are present with separate counsel. There is a single waiting room on the ground floor away from the courtroom. Upstairs, the only waiting space consists of benches and chairs in a narrow hallway. No formally designated attorney-client conference rooms or rooms reserved for use of social services staff exist. Though not ideal, most individuals interviewed indicated that they usually can find an empty office to meet with clients or other parties.

File storage space appears to be inadequate in the register's office. Files are stored in unlocked file cabinets in the open office. The court does have an automated records system. However, juvenile cases have been entered into the system only since mid-1993. The information included in the automated docket at this point is limited. Cases filed prior to that date are added to the database only when an event such as a review occurs. A tornado warning during the site visit emphasized how vulnerable the paper records potentially are to disaster, as well as unauthorized access in the current environment.

XV. CONCLUSION

The timely implementation of permanency plans is impacted by numerous factors, such as court calendaring, case flow management, access to competent counsel, reasonable caseloads for judiciary and attorneys, and the quality and effectiveness of proceedings. Adherence to the above-stated recommendations, as well as being cost-effective, will make a positive difference in the lives of children by diminishing the time they spend in foster care or other out-of-home placements. Their implementation will guarantee that all children who are victims of abuse and neglect will become members of loving families as quickly as they deserve.

As this assessment shows, Michigan probate judges and other court participants have been leaders in the area of juvenile court reform and have implemented court practice, policy and procedure that are models for the nation. Those influencing the establishment of a unified family court system in Michigan must ensure that those aspects of its probate court system that work well for children and families be preserved and that recommendations for improvements in the system be implemented. The vision of the Binsfeld's Children's Commission has equal applicability to this court improvement project:

The Commission envisions Michigan as a state where the best interest of children is the highest priority, as reflected in the allocation of funds and the organization of resources and responsibilities for services to children and families; where programs for children are readily identified and accessed, and have as their primary purpose helping assure children a safe, secure, and holistically nurturing environment.¹⁵¹

¹⁵¹Binsfeld Children's Commission, *In Our Hands*, 2.

XVI. SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1.

The Michigan Supreme Court and SCAO should ensure that a direct calendaring system of case assignment in child abuse and neglect cases be established and maintained in all counties. 22

RECOMMENDATION 2.

The Michigan Judicial Institute and SCAO should develop and implement training for judges and referees at the time they are elected, appointed, or assigned to the bench, and periodically thereafter. This training should be mandatory for all judges and referees, as well as court administrators and other court personnel and should focus on permanency planning issues. . . 25

RECOMMENDATION 3.

To ensure the timely and expeditious implementation of permanency plans, all courts handling abuse and neglect cases should have written policy and procedures governing timely hearings and decision making that mirrors Michigan's statutory mandates. 32

RECOMMENDATION 4.

Tracking systems should be implemented in all courts in which appropriate court personnel are designated to track the amount of time it takes a case to proceed through various stages of child neglect and abuse proceedings, identify the reasons for delay, and move court personnel and parties to a more expeditious handling of a case. 32

RECOMMENDATION 5.

The recommendations of the Michigan Probate Judges Association are incorporated herein and should be adopted. "The Michigan Probate Judges Association believes that reforms should be put in place which would result in closer monitoring of compliance with time limits and that steps can be taken to expedite termination cases that are appealed...." The Association "support[s] the following actions being taken to reduce delays in receiving appeal opinions in termination of parental rights cases:

1. Restructure Court of Appeals reporting system to assure that:
 - a. The Probate Court is notified when time limits on appeals of termination of parental rights cases are not met.
 - b. The Supreme Court receives necessary reports to assure adherence to time limits by all courts.
2. Revise the Court Rules to require that the local Probate Court and interested parties receive:
 - a. Affidavits of service by court reporters for filing transcripts.
 - b. Correspondence between attorneys and the Court of Appeals of delays in time limits and filing of briefs.

3. The Supreme Court review how expeditiously termination cases should be heard and review all time limits in the Court Rules on appeals as to their reasonableness as well as the strength of the existing sanctions and, if appropriate, make necessary revisions of the Court Rules.
4. Michigan Probate Courts should develop methods to:
 - a. Place a higher priority on the completion of transcripts and expeditiously send the lower court record to the Court of Appeals.
 - b. Improve the appointment of counsel process to assure that attorneys comply with the time limits in the appeals process.” 39

RECOMMENDATION 6.

The SCAO should ensure that as statewide court reorganization is implemented, court procedures and practices that are instrumental in diminishing delays in child abuse and neglect cases are maintained. 42

RECOMMENDATION 7.

The SCAO should work with those minority of probate courts that are not scheduling individual cases for a date and time certain. The SCAO should issue a reminder to all probate courts of the applicability of MCR 8.116 “Sessions of the Court” to the handling of child abuse and neglect cases. 42

RECOMMENDATION 8.

Pretrial conferences should occur in cases in which the parties anticipate a contest so that issues for litigation can be clarified and appropriate time set aside for the trial of the case. . . . 42

RECOMMENDATION 9.

The SCAO should ensure that the judiciary and the bar are aware that case adjournments should be granted in child abuse and neglect cases in only the most exceptional of circumstances. 45

RECOMMENDATION 10.

In order to diminish adjournments, county practices addressing the identification of and service of process on fathers, especially FIA practices, need to be more closely examined to determine how fathers can be better identified and served early in the court process. 45

RECOMMENDATION 11.

Policies and practices should be implemented that guarantee that attorneys for the parties (FIA, child, and parent) are appointed before the initial removal and non-removal preliminary hearings. 45

RECOMMENDATION 12.

The SCAO should develop a consistent method of file management, including an automated record system, for use by county courts. 51

RECOMMENDATION 13.

The SCAO should work closely with each county court to evaluate whether each court is utilizing its existing computer technology as effectively as possible for the tracking of cases. 51

RECOMMENDATION 14.

SCAO policy should be implemented to require that each county court produce a uniform quarterly report for submission to the SCAO, the bar and public detailing case tracking information. 51

RECOMMENDATION 15.

Sufficient funding should be appropriated for the purchase and installment of computer software and equipment necessary to upgrade or make uniform existing county case tracking systems. 51

RECOMMENDATION 16.

The SCAO should train judges, local administrators, and other appropriate court personnel on the implementation of an automated tracking system to ensure that a high level of expertise in data management is maintained. Tracking systems should be utilized so that appropriate court personnel or a permanency planning committee are designated to monitor caseflow. 51

RECOMMENDATION 17.

All courts presiding over child abuse and neglect cases should implement procedures that guarantee that each child and parent are appointed trained and skilled attorneys in advance of initial preliminary hearings and who will continue representation to each child and parent until a plan of permanency is implemented (e.g., adoption, reunification, permanent custodial placement). Attorneys for children and parents should be recruited and selected in part for their skill and knowledge in law and fields relevant to child welfare. 56

RECOMMENDATION 18.

The Michigan Bar and the SCAO should work with courts to develop models for use when courts contract with attorneys to provide legal services to parents and children in abuse and neglect cases. The contracts should incorporate provisions addressing the attorney's obligations to the client and standards for reasonable attorney caseloads taking into consideration the need for out-of-court case preparation time. 56

RECOMMENDATION 19.

Recommendation 47 of the Binsfeld's Children's Commission should be implemented. This recommendation provides: "Juvenile Courts in each county shall be assigned specialized, highly trained, permanent prosecutors/attorneys general to represent FIA at all stages of abuse and neglect cases, beginning with the filing of the petition to remove the children from the home. The Family Independence Agency will expand the pilot project that is providing funds to prosecutors to increase their ability to represent the FIA except where a conflict of interest arises." 57

RECOMMENDATION 20.

The FIA or its agent should be represented by reliable civil counsel at all stages of child abuse and neglect proceedings. Michigan's statute and court rule addressing attorney services for the FIA or its agent refers to a prosecuting attorney serving as a "legal consultant" to the FIA. MCL 712A.17(5), MCR 5.914(B)(1). In order to ensure that the FIA is assured of adequate representation in child abuse and neglect proceedings, the above-cited statute and court rule should be modified to clarify that the prosecuting attorney or assistant attorney general is to act as the FIA or its agent's "attorney" in child abuse and neglect proceedings. 57

RECOMMENDATION 21.

The practice in some counties in which FIA workers are responsible for drafting the initial abuse and neglect petition should be modified to delegate this responsibility to the FIA attorney. 57

RECOMMENDATION 22.

The recommendation by the Michigan Children's Ombudsman that MCL 712A.17c(7), the statutory provision addressing the case preparation obligations of the child's attorney, should not only be "better enforced," but "should also be amended to specifically require that the child(ren)'s attorney meet with the child(ren), at least once before each proceeding or hearing" should be adopted. 58

RECOMMENDATION 23.

Public Act 204 that "requires the Ombudsman to investigate and report alleged infractions about attorneys who engage in adoption" should be amended to "...require the Ombudsman to report violations of MCL 712A.17c(7) to the Attorney Grievance Commission." 58

RECOMMENDATION 24.

Prior to appointment, all attorneys who represent the FIA, children, and parents in abuse and neglect cases should be required to undergo mandatory training on topics relevant to advocacy in the juvenile or family court forum and provide information to the court on their experience level. 58

RECOMMENDATION 25.

The recommendations as outlined in the Final Report of the State Bar of Michigan Children's Task Force (September 21, 1995) should be implemented, including that:

The State Bar of Michigan adopt [the Final Report's] Guidelines for Advocates for Children and distribute them to bench, bar and other interested persons throughout Michigan;

The Guidelines for Advocates for Children be implemented by the organized bar, courts, and individual attorneys representing children in Michigan courts for the improvement of such representation; and

Law schools, Michigan Judicial Institute, Institute for Continuing Legal Education, other lawyer training units, and the Michigan CASA Association use [the] Guidelines for Advocates for Children as a basis for training attorneys and others to advocate for children. 59

RECOMMENDATION 26.

The court, attorneys for children, and the organized bar should consider establishing mentorship programs in which more experienced attorneys provide guidance to less experienced attorneys on child advocacy practice. 59

RECOMMENDATION 27.

Recommendation 50 of the Binsfeld Commission Report should be adopted and expanded upon. The Recommendation states: "[The] FIA should work with Prosecuting Attorneys Association of Michigan (PAAM) to ensure Michigan's public and private law schools have child welfare/protection/juvenile law curricula." Added to it should be the statement that other Michigan child and parent legal advocacy groups should also participate in curricula development to ensure that subjects relevant to the representation of parents and children are covered.

Attorneys for children must also be knowledgeable of Michigan's statutory requirements for children's attorneys, the State Bar of Michigan Children's Task Force's "Guidelines For Advocates For Children in Michigan Courts," and the American Bar Association's "Standards of Practice For Lawyers Who Represent Children in Abuse and Neglect Cases," approved by the American Bar Association's House of Delegates on February 5, 1996. 60

RECOMMENDATION 28.

Attorneys representing children and parents should receive compensation that is reasonable and commensurate with the amount and complexity of work involved in child abuse and neglect cases. 69

RECOMMENDATION 29.

Compensation systems should not be utilized that provide disincentives to fulfilling responsibilities mandated by statutes, codes of professional responsibility and other standards (e.g., annual, "no case cap" contracts). 69

RECOMMENDATION 30.

Funding should be provided for the establishment of Court Appointed Special Advocate (CASA) programs in all counties in the state. 70

RECOMMENDATION 31.

New programs should work closely with already existing CASA programs in the state to establish policy and procedure related to the recruitment, training, screening and monitoring of CASA volunteers. 71

RECOMMENDATION 32.

In order for hearings to be effective, the SCAO should develop caseload standards for the judiciary modeled after the formula developed in the Kent County study. 73

RECOMMENDATION 33.

The judiciary’s staffing resources should be carefully evaluated as a unified family court is established in Michigan. 73

RECOMMENDATION 34.

The impact on caseload of recent changes in delinquency laws needs to be examined. 73

RECOMMENDATION 35.

All judges and referees handling abuse and neglect cases should familiarize themselves with the Resource Guidelines' rationale supporting lengthier court proceedings in routine or non-contested cases. 81

RECOMMENDATION 36.

Courts should require the assigned caseworker to submit a comprehensive report on the progress being made toward the implementation of the case permanency plan. A statute or court rule should be enacted which mandates that these reports be submitted to the court, the parties' attorneys, and unrepresented parties at least seven days prior to the scheduled hearing. Courts should monitor the submission of reports and impose appropriate sanctions for any failure to submit a report in a timely manner. 85

RECOMMENDATION 37.

Judges and referees handling abuse and neglect cases should ensure that assigned caseworkers are present for all court proceedings and encourage and mandate the attendance of age-appropriate children. 87

RECOMMENDATION 38.

In addition to the training recommended previously in this report, judges and referees should receive specific training on the Resource Guidelines, in particular the nature and content of preliminary hearings and permanency planning reviews. 89

RECOMMENDATION 39.

In order to ensure that the removal of children from their families is the most appropriate plan, courts must issue orders as to whether the FIA or its agents have made or should make “reasonable efforts” to prevent removal through the provision of adequate family preservation services at all preliminary removal hearings. 89

RECOMMENDATION 40.

Michigan's system for funding foster care and other services to children and families should be evaluated to modify those aspects of the system that create financial disincentives to making negative findings of reasonable efforts. 89

RECOMMENDATION 41.

The following recommendations of the Children’s Task Force of the State Bar of Michigan should be adopted:

- Implement a flexible funding mechanism that allows the court services to follow the family;
- Overhaul existing funding statutes so that they are driven by the best interests of the child and not fiscal implications, so that issues such as the following are addressed:
 1. Amend existing law so that the reasonable efforts determination required by federal mandate does not carry a financial penalty to the county when the court finds that reasonable efforts have not been made;
 2. Amend existing law so that treatment plans and placement decisions are independent of considerations regarding funding sources and the parent's economic circumstances. 90

RECOMMENDATION 42.

Courts should issue detailed written findings of fact and court orders that clearly state the responsibilities of each party and time frames for satisfying those responsibilities. 90

RECOMMENDATION 43.

All Michigan courts should work with their local FIA office to determine whether adoption is being considered early enough as a permanency planning option in all appropriate cases. This issue may be especially relevant in urban courts. 90

RECOMMENDATION 44.

Sufficient funds should be appropriated by the Legislature to ensure the establishment of appropriate preventive and reunification services, as well as placement alternatives that ensure a child's safety and at the same time allow for the timely implementation of permanency plans of family reunification, permanent custody, adoption, or independent living. 95

RECOMMENDATION 45.

Consideration should be given to the establishment of Foster Care Review Boards in those jurisdictions that currently do not have them. 97

RECOMMENDATION 46.

The SCAO should work with local FCRB representatives to evaluate how the Boards' recommendations can be more effectively utilized by courts (e.g., scheduling of court review if the FCRB disagrees with agency's permanency plan; attendance of FCRB representatives at hearings to present case reports). Consideration should also be given to how attorneys for the parties can be more actively involved at FCRB hearings. 97

RECOMMENDATION 47.

A state statutory provision or court rule should be enacted that requires all judges and referees to inquire fully as to whether or not an Indian child is the subject of a neglect and abuse petition at the preliminary hearing in all cases. The SCAO should work with local courts to insure that their

preliminary hearing form orders include language on the court’s inquiry about the child’s Indian heritage. 100

RECOMMENDATION 48.

The Court Improvement Project Advisory Board, local courts, and the SCAO should investigate, establish, and evaluate demonstration alternative dispute resolution (ADR) programs in child abuse and neglect cases in selected sites in accordance with the Resource Guidelines. 106

RECOMMENDATION 49.

The SCAO should identify Michigan courts that may be using the services of mediators in child abuse and neglect cases and examine the effectiveness of those programs in resolving disputes in the best interest of the child. 106

RECOMMENDATION 50.

As unified family courts are established within Michigan, consideration should also be given to expanding already existing domestic relations mediation programs to the realm of abuse and neglect cases taking into account the Resource Guidelines’ admonition that mediators be knowledgeable on all aspects of child welfare. 106

RECOMMENDATION 51.

The Kent County model project on family group conferences should be evaluated for effectiveness and possible replication in other Michigan counties. 106

RECOMMENDATION 52.

Courts should have the authority to order permanent guardianship, power of attorney or “stand-by” guardianship, or open adoption as an alternative permanency plan. 109

RECOMMENDATION 53.

The recommendations of the State Bar of Michigan Children’s Task Force on permanent guardianship should be adopted. 109

RECOMMENDATION 54.

In order to increase permanency planning options for children, consideration should also be given to enacting legislation that permits “open” adoption which in appropriate cases, allows a child and his or her biological family to maintain contact after an adoption decree is issued. 110

RECOMMENDATION 55.

The recommendations of the State Bar of Michigan Children’s Task Force on expanding the statutory definition of “relative” for purposes of child placement should be considered for implementation.” The Recommendations incorporated herein state:

The Task Force recommends that the Michigan Legislature expand MCL 712A.18(1); MSA 27.3178(598.18(1)) to allow for placement of children in

conformity to Act 116 of the Child Care Licensing and Regulation Act, MCL 722.115a; MSA 25.358(15).

It is further recommended that the Michigan Legislature clarify the definition of suitable relative placements in child protective proceedings to allow the court the discretion to define “relatives” within the context of the family relationship and community norms. Act 116 of the Child Care Licensing & Regulation Act should be amended to allow for this expanded definition. 111

RECOMMENDATION 56.

Kinship caregivers should receive adequate financial subsidies and appropriate services that will encourage kinship care for children who otherwise would be placed in the public foster care system. 111

RECOMMENDATION 57.

In light of creation of the family division of the circuit court, and because it is in the best interest of children, sufficient funding should be appropriated by the legislature so that all Michigan courthouse facilities being used for child abuse and neglect proceedings come into compliance with the Resource Guidelines. In all facilities handling child abuse and neglect cases, the following need to be created or, if currently available, maintained:

- adequate waiting and play rooms that are "child-friendly" and designated for children;
- courtrooms that are separate and apart from courtrooms used for criminal and other civil cases, including delinquency cases;
- adequate courtrooms so that all court participants, including judicial officers, court staff, attorneys for the parties, can be comfortably seated; attorneys should have access to adequate counsel table space to allow for consultation with clients and for the taking of notes and reviewing of files and other appropriate materials;
- Adequate and private conference rooms (in the vicinity of the juvenile courtrooms) that enable attorneys to consult with their clients, including child clients;
- Consistent policies about confidentiality of files and the public's access to child abuse and neglect hearings. 114